Public Utilities

FORTNIGHTLY

August 29, 1946

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Public Utilities Fortnightly

VOLUME XXXVIII *August 29, 1946* NUMBER 5

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Pages with the Editors

In our issue of July 18, 1946, we were privileged to publish a contribution from the distinguished governor of New Jersey, the Honorable Walter E. Edge, describing recent legislation in that state affecting strikes and threats of strikes in public utility industries. In this issue we are privileged to present another article by another distinguished state governor, the Honorable William M. Tuck of Virginia, who goes into the policy of his state administration regarding threatened public utility strikes.

We bracket the names of these two governors because both have dealt in a very courageous and intelligent manner with the same vitally important subject. Yet the two governors have taken different avenues of approach. We hasten to add that there is no discernible conflict in the ideas of Governor Tuck as compared with Governor Edge in dealing with threatened public utility strikes. The differences which have occurred are more or less the result of differences in the respective situations which these two state executives had to handle.

In New Jersey Governor Edge found that the existing state law at the time of threatened public utility strikes did not afford sufficient protection to the citizens of that state against the dangers and burdens necessarily incident to a public utility strike, and so he called upon his legislature for a new law and succeeded in obtaining it. This law, as Governor Edge described in our July 18th issue, sets up mediation procedure designed to avert public utility strikes and provides for state operation of such companies when strikes are threatened. After such seizure by the state, it is assumed workers will return.

HON. WILLIAM M. TUCK

In Virginia, on the other hand, Governor Tuck was faced with a somewhat different situation. A statewide electric utility strike threatened so suddenly to overwhelm the great commonwealth of Virginia that he had to act swiftly and with great resourcefulness. Fortunately, the governor found that the militia law already on Virginia's statute books afforded the state executive broad powers to mobilize citizens during any emergency where necessary to avert injury to the public security.

Utilizing these broad powers, Governor Tuck succeeded in averting the strike, although there may be some remaining difference of opinion as to such legal interpretation of Virginia's militia law. In one, and the most important, respect, the formula of Governor Edge closely resembled the formula of Governor Tuck. That is to say, they both worked successfully.

REDUCED to simple terms, the Edge formula says, in effect, to utility workers who threaten to strike: "If you don't stay on the job, the state will take over these properties and operate them." The TUCK formula says, in effect: "If you don't stay on the job you will be drafted into the militia, and be subject to military law if you disobey military orders."

IT would thus seem that the Virginia solution goes a little further than the New Jersey plan, although the latter has worked successfully in its first major test. The New Jersey plan leaves unsettled the question of what the governor would do if workers refused to report on their jobs after the state had seized a utility company. The Virginia plan does not seem to leave much doubt on that point.

IT is noteworthy also that GOVERNOR TUCK, after the Virginia strike emergency had passed, asked his state legislative council to make a study of possible legislation for settlement of labor disputes affecting essential public utilities. States generally seem to be taking a more vigorous rôle in handling these serious labor disputes. Possibility of legislation affecting public utility strikes has been suggested in Ohio and Michigan. New York state's mediation board, already widely cited as an outstanding example of a successful state agency, is further strengthened by bills enacted this year. Connecticut's state board of mediation was urged by Governor Baldwin to take a more active rôle in strike cases. Wisconsin's state employment relations board has announced plans to step up its conciliation and mediation work.

* * * *

THIS whole picture is especially interesting in the light of the dominating rôle which the Federal government has seen fit to play in labor relations during the past decade. When the Federal government first entered this field, its activities, supported by court decisions, had the tendency to overshadow if not paralyze state action. Now the states seem to feel that they must take steps to protect local interests. There would seem to be more than a mild inference here that perhaps the Federal government has muffed the ball—or, at any rate, that the states are not entirely confident that the Federal government is doing all that could be done in the way of effective labor regulation.

* * * *

GOVERNOR TUCK'S career shows a steady rise from the time when he graduated from Washington and Lee University (LLB, '21) and was admitted to the bar during the same year. Starting out to practice in his home town of South Boston, Virginia, this young lawyer was elected to the Virginia House of Delegates in 1923, where he served until he was elected to the Virginia state senate in 1931. After ten years as a senator, he was elected lieutenant governor in 1941 and assumed office as governor of Virginia in 1946. GOVERNOR TUCK was born in Halifax county in 1896, and served in World War I with the U. S. Marines.

* * * *

FREDERIC E. BENTON, whose article on "Control of Accounting As a Means of Regulation" begins on page 277 of this issue, is presently assistant comptroller of the Philadelphia Transportation Company, and was educated at Lowell, Massachusetts and Dartmouth College. MR. BENTON received his Pennsylvania certified public accountant's degree in 1930. He took his present post in April, 1944, after spending five years as principal accounting examiner for the Pennsylvania Public Utility Commission. He is forty-six years old and a member of the Pennsylvania and American Institute of Accountants and the Comptrollers Institute.

* * * *

ED C. POWERS, whose article entitled "For Better Street Lighting" begins on page 286, is the director of the office of informational services of The Street and Traffic Safety Lighting Bureau, with headquarters in Cleveland, Ohio.

THE next number of this magazine will be out September 12th.

The Editors

In This Issue

In Feature Articles

In Government Utility Happenings

In Wire and Wireless Communication

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129-192, from 64 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EMIL SCHRAM
President, New York Stock Exchange.

"We preach democracy abroad and practice statism at home."

EDITORIAL STATEMENT
The Nashville Tennessean.

"Invective is, as is well known, the last and cheapest resort of a man who has no stable argument to back a desperate position."

PAUL B. WEST
President, Association of National Advertisers.

"American enterprise can only win and maintain social leadership and good will by demonstrating its good citizenship and statesmanship."

JOHN STELLE
National commander, American Legion.

"There is another war in which no peace was signed on VE- and VJ-days. It is the war against our internal foes—the enemies boring from within."

PHILIP MURRAY
President, Congress for Industrial Organizations.

"There isn't anyone or any group big enough to do a single solitary damn thing to the CIO. We are more influential and powerful than at any time in our history."

HENRY M. JACKSON
U. S. Representative from Washington.

"... the cost of steam power is certain to increase during the postwar period, which will further work toward the advantage of low-cost hydroelectric power."

ALBERT W. HAWKES
U. S. Senator from New Jersey.

"Monopoly must not be permitted in this country in the ranks of ownership, labor, agriculture, religion, or any other phase of our life, if we are to survive as a free people."

HAROLD W. DODDS
President, Princeton University.

"Unless the voter feels that he understands his government, he cannot have a sense of ownership in it. Unless he has a sense of ownership in it, he cannot control it. Unless he can control it, there is no democracy."

HAROLD D. SMITH
Former director, Bureau of the Budget.

"It is obvious that to balance the budget with a surplus means, on the one hand, that taxes must be maintained or raised and, on the other hand, that expenditures must be reduced. If we do cut taxes further, it will merely mean that there will be more purchasing power bidding for scarce goods."

ROBERT R. WASON
President, National Association of Manufacturers.

"The country will find, as it often has in the past, that the great strength of the nation lies in the voluntary coöperation of free citizens rather than in the European system of bureaucratic control as exemplified by OPA."

EDITORIAL STATEMENT
The New York Times.

"Government exists primarily not to protect itself, but to protect the general welfare. It ought to be just as illegal to throw a brick through the window of a privately owned factory as through that of a government building."

WILLIAM F. ROCKWELL
President, Rockwell Manufacturing Company.

"There is no more patriotic action possible in peacetime, or in wartime, than to produce more than we consume. It will pay off our debts and raise the standard of living, so that the luxuries of today will be available to everyone of us and to our children."

JOSEPH STALIN
In his book, "Problems of Leninism."

"To a reformist, reforms are everything . . . to a revolutionist, on the contrary . . . reforms serve as instruments that disintegrate the régime . . . as strongholds for the further development of the revolutionary movement."

FERDINAND EBERSTADT
Investment banker.

"The great challenge of our time is to make our discoveries and accomplishments in the field of human relations match our feats of science and industry—to split the atom of peace that dwells in the hearts of all good people everywhere."

EDITORIAL STATEMENT
The Washington Post.

"Labor leaders and managerial heads . . . who refuse to acknowledge a responsibility to society as well as to the workers or the stockholders whom they represent are unwittingly the deadliest enemies of free enterprise in the United States today."

JOSEPH F. GUFFEY
U. S. Senator from Pennsylvania.

"I want to say that, in my judgment, the government will have to take over the telegraph company's business before the company becomes insolvent or we will not get good service. I do not like to say such a thing, but that is what is going to happen."

POTTER N. EMERSON
President, Kiwanis International.

"Socialism and Communism have no place in our democracy. Liberty is on the bargain tables all over America today at a discount and exchange prices. We are trading it away for all kinds of social experiments, fathered by those who would change our form of government. We are having foisted upon us state Socialism that has no place in our democracy. If we are to preserve individual initiative and private, competitive enterprise, we must awake to all the efforts being organized in this country to destroy them."

ON THE JOB QUICK

INTERNATIONAL TRUCKS get on the job quick when public utility repairs and replacements are to be made. And an International of the right size and carrying capacity is available for every utility job. Here's why:

The International Truck Line is a *complete* line, providing trucks of all sizes, from agile half-ton pick-up trucks to giant 6-wheelers.

And Internationals are trucks all the way through. In no single way are they passenger car adaptations. They are designed as trucks, engineered as trucks, and built as trucks to furnish truck service.

This all-truck construction is one reason for International's unmatched record—a record of more heavy-duty Internationals purchased for commercial use in the last 15 years than any other make.

Another reason for International's predominance is International Truck Service—furnished by a network of International Truck Dealers and a system of International Truck Branches that form the nation's largest company-owned truck-service organization.

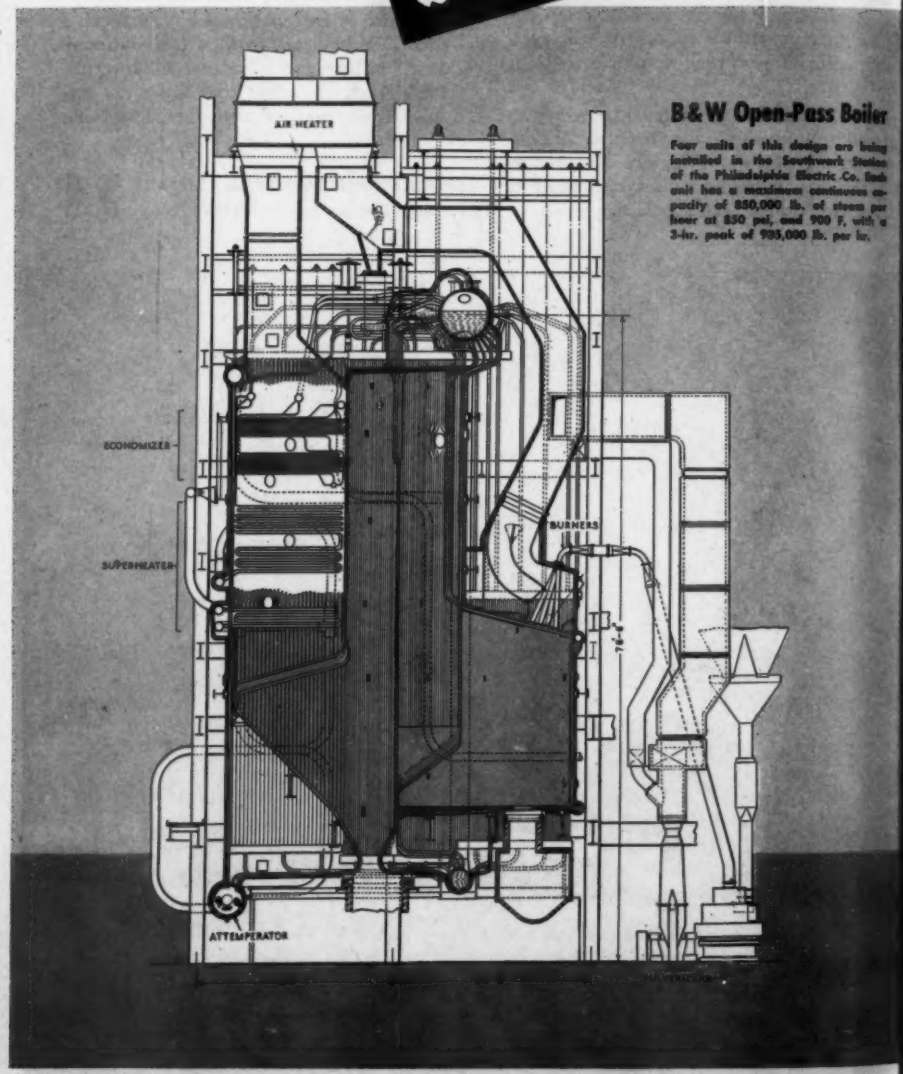
INTERNATIONAL HARVESTER COMPANY
180 North Michigan Ave. Chicago 1, Illinois

...e in "Harvest of Stars" Sunday, 2 p.m. Eastern Daylight Time, NBC Network.

INTERNATIONAL Trucks

Steam for Southwark

B&W BOILERS



B&W Open-Pass Boiler

Four units of this design are being installed in the Southwark Station of the Philadelphia Electric Co. Each unit has a maximum continuous capacity of 850,000 lb. of steam per hour at 850 psi, and 900 F, with a 3-hr. peak of 935,000 lb. per hr.

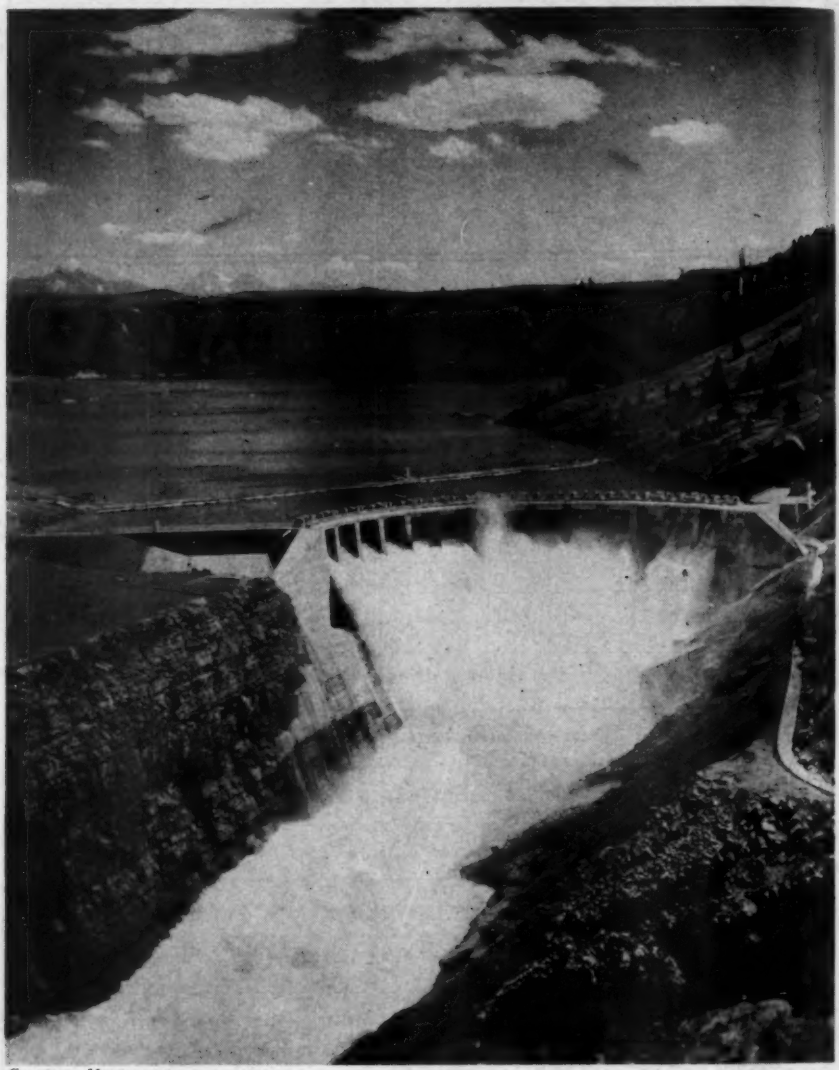
Utilities Almanack

August

29	Tʰ	¶ *South Dakota Telephone Association will conclude meeting, Sioux Falls, S. D., Sept. 12, 1946.*
30	F	¶ *American Water Works Association, Rocky Mountain Section, will hold meeting, Sept. 12, 13, 1946.*
31	Sª	¶ *Midwest Industrial Gas Council will convene, Minneapolis, Minn., Sept. 12, 13, 1946.*

September

1	S	¶ *American Water Works Association, Western Pennsylvania Section, will hold meeting, Sept. 12, 13, 1946.*
2	M	¶ *American Transit Association will hold annual meeting, Chicago, Ill., Sept. 16, 17, 1946.*
3	Tᵘ	¶ *Statewide meeting of REA co-ops will begin, Casper, Wyo., 1946.*
4	W	¶ *Statewide meeting of REA co-ops will begin, Springfield, Ill., 1946.*
5	Tʰ	¶ *Rocky Mountain Electrical League will begin annual convention, Estes Park, Colo., 1946.*
6	F	¶ *Instrument Society of America will hold national conference and exhibit, Pittsburgh, Pa., Sept. 16–20, 1946.*
7	Sª	¶ *Michigan Telephone Association will hold meeting, Lansing, Mich., Sept. 18, 19, 1946.*
8	S	¶ *American Water Works Association, Michigan Section, will hold meeting, Sept. 18–20, 1946.*
9	M	¶ *American Water Works Association, Southeastern Section, will hold meeting, 1946.*
10	Tᵘ	¶ *Pacific Coast Gas Association will begin meeting, San Francisco, Cal., 1946.*
11	W	¶ *Sixth Annual Appalachian Gas Measurement Short Course will be concluded at the University of West Virginia, Morgantown, W. Va., 1946.*



Courtesy, Montana Power Company

Kerr Hydro Dam of Montana Power Company

Located on the Flathead river,
near Polson, Montana.

Public Utilities
FORTNIGHTLY

VOL. XXXVIII, No. 5 AUGUST 29, 1946

How a Governor Stopped A Threatened Utility Strike

The emergency, legal background, and steps which led to prompt and decisive executive action to prevent paralysis of state activities which would have followed a statewide shutdown of electric service.

BY THE HONORABLE WILLIAM M. TUCK*
GOVERNOR OF VIRGINIA

My sole purpose in acting to keep local power company employees from cutting off electricity in Virginia through a statewide strike was to see that the public safety and welfare were protected. This I believe to be the responsibility of every governor, of every legislator, of every public official. The first and fundamental function of government is to protect the public interest. All of the complicated activities of government have that simple end in view.

I realize this conviction is not original with me. It dates back to the days of the old Romans, greatest lawgivers the world has ever known. In their time, each youth, before he could vote, was required to learn and recite from memory the fundamental legal principles of Roman law, engraved on two brass tablets in the Forum. All were important, but high above them, in large letters, was this: *"Salus populi suprema lex"* (the safety of the people is the supreme law).

* For personal note, see "Pages with the Editors."

Commendation on my stand in the power strike threat has come from many quarters of the nation. At the same time, I have received some criticism, most of it from labor leaders who claimed I was acting beyond the law.

When the statute under which I acted was passed, those responsible for it may not have intended it for the uses to which it was put, but neither did they envision a strike of electric workers and resulting evils. No one will deny that this statute was designed to enforce the law and to protect the people from disaster and subjugation, as well as to preserve the state sovereignty of Virginia. Had this strike occurred, involving as it did two-thirds of the commonwealth and practically all large cities and towns, including the capital, depriving them of food, water, ice, telephones, sanitation, heat, and health facilities, there would have been nothing more devastating or destructive of our state sovereignty. The government itself would have been powerless to function.

FACING such a crisis, I stood ready to use whatever power I had to enforce the laws of the commonwealth, to uphold the state sovereignty, and to prevent this disaster before it came. I held and I still hold that those who work for public utilities, such as power companies, have no right to strike or to quit *en bloc* when, by so doing, it would result in such disaster. It is my conviction that no man, no set of men, no combination of individuals or influences, however powerful they may be, should be allowed to strike against the public interest and, by so doing, thwart the government in the exercise of its vital functions.

When the International Brotherhood of Electrical Workers gave notice that employees of the Virginia Electric & Power Company would strike at midnight March 31st of this year unless its demands were met, I knew I could take no chance for such a thing to happen. I bided my time, day by day watching developments growing out of negotiations.

On March 22nd, nine days before the deadline, I decided it was time to act and requested the state commissioner of labor to summon to my office representatives of both disputants. The company agreed to come, but the union's leaders expressed the view that they should not do so unless there also were present the governors of North Carolina and West Virginia, into which states a small part of the company's service extends. In calling this meeting, it was my purpose to ask the union to withdraw the strike order unconditionally. Had this been done, I intended to inquire into the situation to determine, if I could, what was just and right between the parties, to act as a mediator, and to use the influence of the governor's office to correct injustices, if any were found to exist. In my opinion, it is not proper for a public official to negotiate or make terms with those who threaten to do violence to the public interest.

SHORTLY after plans for the meeting failed, I issued a statement declaring my intention, in case a settlement was not reached, to seize the power company properties and to operate them for the public benefit. I gave full warning in this statement of the seriousness of the situation.

"Human health and safety facilities

will be paralyzed," I pointed out. "Hospitals, with their numerous expectant mothers, their seriously ill, and their emergency patients, will be left in darkness, and physicians will be without power to carry on and administer to the needs of the suffering and the afflicted. Dairies, running full force to feed our children as well as adults, will be forced to shut down. Many homes will be unable to cook a meal or even to do so much as toast a biscuit. These are only a few of the most severe effects of such a tie-up. In our modern way of living, we are geared to power and, when it is cut off, we are practically helpless, so that hunger, famine, pestilence, and even death will be the result."

I stated firmly that, as governor of Virginia, I did not intend to sit idly by and do nothing in the face of such a disaster. I explained that there was no question in my mind as to my powers, or as to my right and duty to make full use of them in dealing with the problem.

"I am determined and I shall not hesitate to exert every power of the office of governor in this emergency to prevent such a calamity," I said.

I EXPLAINED that I was absolutely impartial in my attitude toward both industry and labor, but that, if it was necessary for the commonwealth to intervene, I should expect the company to surrender its property to designated state agents. At the same time, I added, I should expect both officials and employees to work and to coöperate with these agents and with each other to prevent serious inconvenience or suffering.

Despite my original statement and public plea to these parties to become reconciled, the IBEW representative asserted on Saturday that the strike would take place as scheduled unless union demands were met. On Sunday, I dispatched a telegram to the president of Vepco in which I gave notice that, unless I heard by noon Thursday from a responsible representative of both the company and union that there would be no interruption of power service, I would immediately declare an emergency to exist and proceed to take such action as was necessary and proper to protect the public interest. A similar message was sent the IBEW agent, making of him the same request.

A long telegram arrived at my office Monday from the IBEW spokesman in which he asked me to defend "the rights and privileges of economic minorities." He contended that the workers were justified in their demands and said they were determined "that the vast accumulation of wealth known as Vepco gained from the citizens of Virginia shall not use such wealth as a source of economic power to impose undesirable work and living conditions upon a large portion of the citizenry of Virginia."

FURTHER negotiations followed on Tuesday and wound up with an announcement from the union that they

¶ "THE *first and fundamental function of government is to protect the public interest. All of the complicated activities of government have that simple end in view.*"

were "definitely deadlocked." That night I conferred with a Federal conciliator from Washington, who asked me to take part in the negotiations and to use the influence of my office to bring about an agreement. I refused, emphasizing that I would take no part unless and until the strike order had been unconditionally withdrawn.

Next morning I sent a telegram to the IBEW representative asking him for a "yes or no" answer by noon of the following day as to whether or not union employees would work for the commonwealth at their respective stations and under the same wage and labor conditions, in case it were necessary for the government to intervene. A similar telegram, inquiring whether the company would surrender its property for operation by the commonwealth, was sent the Vepco president.

The IBEW spokesman replied that he was merely the servant of the union members, that he had sent my request to all local unions, and that I would have to await their decision. His reply was evasive and not responsive to my question. Meanwhile, the power company replied "yes" and notified me that it would coöperate in every way possible if the state took over the properties.

WHILE these exchanges were taking place, I never for a moment ceased my preparations to seize the power plants. Meetings among department heads and other state advisers concerned with the problem were carried on daily under my supervision. By Wednesday, I had worked out in my mind the plan of action I would follow.

Noon Thursday, the hour of my ultimatum, arrived without the "yes or no" answer from the union. I at once issued a statement in which I declared that a state of emergency existed and that, in a few more hours, I would issue a formal order seizing the property and equipment of the power company. I added that I would from time to time issue such orders as were necessary to operate these plants without any interruption or diminution of service.

"At the outset of this endeavor," I concluded, "I must remind the people that enforcement of the law is the cornerstone of democracy. Without law enforcement, all other functions of government fail. I specifically called the attention of the employees of the Virginia Electric & Power Company to the fact that, like all good citizens, their first obligation is to the commonwealth and any obligations to unions or other organizations should be subordinated when found in conflict with the public interest. No good citizen will allow anything to interfere with his allegiance to Virginia.

"When necessary, my oath requires —and it is my will—to compel compliance with all law. I shall act without fear or favor and with a firm hand and a resolute determination. In this I have the right to expect the support of all law-abiding citizens of Virginia and to demand the support of all others. This latter I shall require."

DURING the same day, I drew up an executive order drafting a list of Vepco officials and employees furnished me by the company as essential into the unorganized militia of the commonwealth and directing that they be organized into a unit to be known as the "Emergency Laws Executing Unit." That night members of the Virginia State Guard, who had been

Unorganized Militia

"PERHAPS during the time of George Washington and Thomas Jefferson, a section was added to the Virginia code to make every able-bodied male citizen of Virginia between the ages of sixteen and fifty-five a member of the 'unorganized militia.' At the same time the lawmakers were preparing this provision, they also specified that the governor should have authority to call out the unorganized militia—'or any part thereof' —to see that the laws are enforced."

alerted previously, assembled at armories throughout the affected areas of the state.

Next morning early—three days before the union's strike deadline—guardsmen began serving two papers on the essential workers and officials. The first of these was a notice that they had been drafted by the governor as commander in chief of land and naval forces of Virginia into the unorganized militia and directing them to report within twenty-four hours to officers on duty at the various power company offices and plants. The second granted them a temporary suspension of active military duties so long as the company conducted its operations without interruption by strike, but gave notice that, whenever a strike occurred, they were to report for active duty at the same post or position they were filling with Vepco at the time the strike occurred and were to perform the same duties for the commonwealth that they were accustomed to perform for the company. Refusal to obey, it was explained, would bring punishment by court-martial.

IN this action, I employed a combination of laws, at least one of which had been on the books perhaps since Colonial days. The broadest of all is included in the state Constitution and requires the governor to "take care that the laws be faithfully executed." It also makes the chief executive commander in chief of the state's land and naval forces, with power to "embody the militia and enforce the execution of laws."

Under a section of Virginia's Public Utility Law, rates which may be charged

by utilities are described. Moreover, such companies as Vepco are specifically required by this particular section to furnish "reasonably adequate service" to the public. This section involved the greatest threat of law violation. If a strike occurred and prevented Vepco from furnishing "reasonably adequate service," it would mean the law had not been carried out, resulting in other serious law violations and a collapse of state and local government.

In my search for a law by which to keep such a thing from happening, the attorney general, at my request, dug back into the early statutes. Perhaps during the time of George Washington and Thomas Jefferson, a section was added to the Virginia code to make every able-bodied male citizen of Virginia between the ages of sixteen and fifty-five a member of the "unorganized militia." At the same time the lawmakers were preparing this provision, they also specified that the governor should have authority to call out the unorganized militia—"or any part thereof"—to see that the laws are enforced. This authority is open to him only after the regular militia has been summoned to duty and then only by a call for volunteers or by draft.

In enforcing this combination of laws, there was no discrimination between company officials, skilled workmen, or common laborers. If they were classed as essential, they were served a draft notice, no matter whether they were vice presidents or cable splicers.

Within a few hours of the service of the draft notices, labor leaders returned to Richmond and resumed negotiations with the company. Their attitude was not then nearly so truculent and unyielding as before. Where a few hours earlier they had refused arbitration, they now were seeking it.

From the time I declared an emergency on Thursday, I constantly issued statements to the press to assure the public that I was in earnest. At the time the workers were drafted, I released a statement that began with this paragraph:

"The action the commonwealth is taking is for the sole purpose of guaranteeing that these power plants will be kept open. The hand of the state will be removed when this unbridled threat to strike is withdrawn and disaster thus averted, and it will not be removed until then."

I added that I did not intend to be lulled into a false sense of security. Further in my statement, I said of the labor leaders that "these same dictators have known for more than a week how they can settle with the commonwealth, and they can now do it in two minutes or less—simply by withdrawing the strike order." In answer to the false charges by IBEW leaders that I had disrupted negotiations, I pointed out that nothing that the state had done or would do interfered in the slightest with these discussions.

Later that day, I issued this brief statement:

"I am pleased with the progress of our plans. Many capable and patriotic Virginians in and out of the union are sending me messages volunteering and offering me their services to the end that the power will not be cut off in Virginia. I am not at this time trying to solve any social, economic, or labor problem. These problems can be solved

in the weeks, months, and years that lie ahead. I am simply exercising my duties and the powers of the high office which I hold to see that suffering, death, and devastation do not come to Virginia. The lights in Virginia will not go off."

Before that day ended, this telegram from my office was in the hands of the head of each state institution:

"I am directed by Governor Tuck to ask that every employee of your institution with training in operation of electric power and light systems or steam boilers be ready upon request to give all possible help in maintaining electric power service in Virginia areas threatened with strike of electrical workers."

A similar call went to the mayors of cities and municipalities. The response in all cases was excellent.

All Saturday, throughout the period during which negotiations were resumed, I was furnished with reports on developments. Even before noon, I was assured an agreement was near. Late in the afternoon, I was notified that the strike had been called off and that both sides had agreed to submit the dispute to an arbitration board. Without delay, I hurried to a radio station and broadcast a message to the people in which I declared the emergency at an end and honorably discharged all those who had been drafted, at the same time thanking them for their services.

"It is my fervent hope," I said in closing my message, "that the proposed arbitration may result in a decision that is just and satisfactory to all. Now that this threat has been removed and I am free to act for the people without compulsion, I volunteer and offer the full influence of the office of the governor to that end. The lights in Virginia will not go off."

IN some quarters, there was evident misunderstanding of my intentions in taking such action. No officer or employee, as a member of the state militia, was or would have been required to work one minute for a private corporation during the crisis, but were or would have continued serving the state as militiamen throughout the emergency in order to keep the essential services going. As everyone knows, a small percentage of an army fights with guns, and those who do would be powerless to succeed without the other essential fighters who fire the boilers, keep up communication lines, dig trenches, build roads, operate trucks, cook, and do other things required to win a battle. Are these latter members of our armed forces in involuntary servitude or are they patriots?

I would welcome a test of my action in any court of competent jurisdiction.

❦

¶ "As *everyone knows, a small percentage of an army fights with guns, and those who do would be powerless to succeed without the other essential fighters who fire the boilers, keep up communication lines, dig trenches, build roads, operate trucks, cook, and do other things required to win a battle. Are these latter members of our armed forces in involuntary servitude or are they patriots?*"

Virginia in this crisis occupied a position similar to a storm-tossed vessel in mid-ocean with a threat of mutiny among its crew. No one will question the right of the captain of that ship to resort to any necessary measures, regardless of how drastic they might seem, to bring that vessel, laden with the lives of innocent people, safely into harbor. We might abuse the captain after we had landed, but, if he had sat idly by and permitted disaster, he would deserve to be thrown overboard, while someone with ability and courage to act would be put in his place.

My action brought into my office what is believed to be the largest number of letters and telegrams ever received by a governor of Virginia on a single subject. These messages came to me from every state in the Union and totaled well into the thousands. They were written by people in all walks of life—members of Congress, ministers, doctors, lawyers, heads of colleges and schools, common laborers, bank and industrial firm presidents. While no actual check was made, it is estimated that, to every one in opposition, there were at least 100 in approval. With rare exception, those which did not approve were written by members of labor organizations or people closely associated with them.

HERE is some of the typical praise: Washington, D. C. — "It was high time that such action as you have taken had been accomplished. The Federal government should have done such before."

Tappan, New York—"My gratitude that at last there is a governor who looks out for the welfare of all of the people of his state."

Conasauga, Tennessee — "Thank God for at least one official who has guts. If the U.S. Senate would do its duty, we would be rid of these killing strikes."

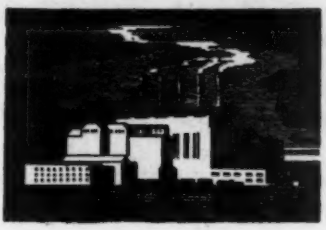
Endicott, New York—"Please accept the admiration and unqualified approbation of a humble citizen of New York state for your superb handling of the impending strike of utility workers in your commonwealth. This demonstration of forthright integrity in fulfilling the duties of your high office comes as a welcome relief from the almost universal 'public be damned' policy employed in labor disputes by many public officials today."

Ada, Oklahoma—"I read with much interest of your action with regard to the induction of public service workers into the militia. I wholeheartedly agree with you that no public service employee should jeopardize the welfare of a community or state by striking . . . I want to commend your action. It is the first evidence of forthright courage I have seen by an executive in a similar situation."

Tampa, Florida—"So there really is in this United States of ours one chief executive who dares oppose anarchy and minority action. For the first time, public welfare is being held over and above political popularity."

Caracas, Venezuela—"It was with the greatest pleasure that I read a relayed article of your handling of the threatened electric power strike in Virginia. Actually, I could not help but give a silent cheer at the discovery of at least one government official at home who is not afraid to act in a way he knows to be right—let the chips fall as they may."

From labor leaders in Washington



Should Essential Utilities Strike?

"THAT class of our labor now employed in essential utilities . . . is entitled to be treated fairly and justly. They should have a redress and a remedy, but that must not be to strike when to do so would bring public calamity."

and elsewhere came cries of "Hitlerism," "unconstitutional," and "involuntary servitude." This quotation from labor's official publication is characteristic of most of the comment in opposition:

"Tuck put out a Hitler-like order, never before used in the Old Dominion or any other state, under which 1,600 members of the International Brotherhood of Electrical Workers employed by the Virginia Electric & Power Company were drafted into the 'unorganized state militia.' "

ONE irate resident of Norfolk, Virginia, in sympathy with this attitude, wrote me:

"What the hell you think we people here in our beloved state will allow you to cram down our throats? You have done us damage it will take twenty years to outlive. If you are fool enough to believe we will submit to industrial slavery, you are greatly mistaken. I wish you were man enough to admit you are wrong. Everybody in Virginia would have a deep sympathy and a proper respect for your manly courage. But as things are now, you have sunk to the bottom, in every workingman's and woman's estimation, and the big chiefs have less respect for you as a result of such a drastic order. If you don't relent, then get to hell out the country and join up with Hitler's gang in Argentina. You will feel more at home. Truman or anyone in the State Department can tell you just where to find him."

From Washington, D. C., came this message from a veteran enrolled at an electrical school:

". . . I have followed the Vepco dispute and I can't understand how a good old Virginian and a good Democrat could do what you have done to organized labor . . . We have just completed fighting a lousy war so people could live and work as free men. You come along and, by your conception of doing what's justified, tear it all down."

One of the most gratifying things of all to me was the opinion of the at-

torney general of Virginia upholding what I had done. In his ruling, he said that the condition of affairs at the time I acted "not only constituted a grave threat to the health and safety of the people within the area affected, but also threatened to interfere with and obstruct the proper functioning of the state government itself." He cited cases from practically all the courts of the land, including the Supreme Court of the United States, supporting the general principles underlying the duty and obligations of a state government to its citizens under such circumstances.

MORE recent indorsement of my plan of action came at the time President Truman requested of Congress emergency powers with which to prevent strikes. On May 27th, Senator Harry F. Byrd of Virginia sought and obtained permission to have printed in the *Congressional Record* all of the orders and public statements I had issued during the period of the strike threat. They appeared in the pages from 5925 to 5932 of the *Record* of that date.

"The action taken by Governor Tuck," Senator Byrd said in addressing the Senate, "is nearly identical with the action now proposed by the President. In Virginia the strike was stopped and no further trouble has occurred.

"The action which was taken by the governor of Virginia is of great public interest as it bears directly on the pending legislation."

I have pointed out in statements since I have been governor that the right of labor to strike in nonessential industries is a fundamental principle which will be recognized. The full power of the state will protect them in this if necessary. That class of our labor now employed in essential utilities, meanwhile, also is entitled to be treated fairly and justly. They should have a redress and a remedy, but that must not be to strike when to do so would bring public calamity.

I SHALL ask the Virginia Legislative Advisory Council to inquire into the matter of setting up machinery which will be fair to labor employed by public utilities and before which their grievances may be laid. The state corporation commission might be the answer, for this commission passes upon and fixes the rates for utilities and it might also fix the salaries of employees and officials of these utilities.

Such a step I believe to be in the right direction.

Meanwhile, throughout my administration as governor, I intend to enforce all the laws, particularly those affecting public safety.

Opposition to Nationalization

ONE *class of* [*British*] *transport users—the 180,000 holders of 'C' licenses, which permit a trader to carry his own goods in his own vehicles—is particularly antagonistic to nationalization, since to be effective that would almost certainly involve the abolition of the 'C' license and force the holders,* E.G., *the big departmental stores, to resort to public transport, with its lesser convenience and greater cost.*

Control of Accounting As a Means of Regulation

A matter of concern, declares the author, which faces the entire public utility industry and, indeed, all industry subject to government regulation and control.

By FREDERIC E. BENTON*

RECENTLY a distinguished authority on utility law commented that there was no body of correct accounting principles applicable to utilities to which he could refer as he did to the body of law regarding utility regulation. Such law might change, but it represented something to which he had access. This is not true, he said, as to utility accounting principles. There he felt that he was reduced to countering one accounting witness by another, each of whom quoted "sound accounting principles."

The experience of the writer as a practicing accountant and as one concerned with the problems of utility regulation makes him sympathize with this viewpoint.

This article is addressed primarily to those who have responsibility for the accounting of public utilities and to the accounting profession as a whole. The writer believes that the inchoate situation of public utility accounting is primarily the responsibility of the accounting profession and that it is the background against which we should view the attempts of some regulatory commissions to use their legal control of accounting procedures as the means of enforcing theories of regulation not specifically, at least, contemplated by law.

This concern faces the entire utility industry and, indeed, all industry which is subject to governmental regulation and control. And accountants have a peculiar interest and responsibility to consider seriously the problems which arise from current attempts to use control of accounting procedures as the most effective means of regulation. This involves the replacement of regulation by law, approved and interpreted by the courts, by regulation through the establishment of accounting policies, determined by each admin-

* For personal note, see "Pages with the Editors."

istrative agency for and by itself without reference to established principles of accounting.

A year or so ago, it was possible to foresee the results of such control of accounts. Nevertheless, recent court decisions show that the courts are not aware of the situations that may arise through the prescription by regulatory bodies of systems of accounts and accounting procedures. We now find that practices which appear to be in accordance with law have been outlawed by accounting rules, apparently without an understanding by the courts of the implications of such decisions. There is little evidence that the partly tolerant and partly contemptuous attitude of many lawyers toward accounting has changed. As was recently said, "Accounting has become an important social force, but its maximum effectiveness cannot be achieved until its principles are understood and implemented by the law."[1]

IT is encouraging that not all accountants share this unawareness of the importance of this development, but the effectiveness of their protests is, I believe, hindered by a misunderstanding on their part which will be stated later. Their concern is evidenced by an editorial headed "Accounting and Regulation" in the April, 1946, issue of the *Journal of Accountancy,* from which I quote the following paragraphs:

> The Supreme Court of the United States on January 28th uttered an opinion in the case of United States et al. *v.* New York Telephone Company[2] which said that the court would not upset an accounting order (of the Federal Communications Commission) unless the order was "so entirely at odds with fundamental principles of correct accounting as to be the expression of a whim rather than an exercise of judgment."
>
> This statement of the court sharply defines a problem of major importance to the accounting profession, the outlines of which have been becoming visible for some time. The government agencies impowered to regulate certain industries or certain types of business or financial activities have found accounting a principal instrument of regulation. They have issued uniform systems of accounts, accounting orders, or accounting rules from time to time. Naturally, these accounting requirements have been designed to assist the agencies in accomplishing the purposes for which they were created. Since these purposes vary widely, it is not surprising that the accounting requirements of the various agencies are neither consistent among themselves, nor with the accounting principles accepted by the accounting profession as those most useful for the purposes of the economy as a whole.

ANOTHER recent example of this lack of understanding by the courts occurred in the decision in the Northwestern Electric Company Case.[3] In this case the United States Supreme Court ruled upon an order of the Federal Power Commission directing the Northwestern Electric Company to make a certain accounting disposition of a "write-up" on its books. The disposition ordered was of a nature that the American Institute of Accountants felt that it did not conform with generally accepted accounting principles and filed a brief, taking no position as to the commission's order but urging that an approval of the order should not be based upon principles of accounting. The court stated:

> Although, as suggested in a brief filed by the American Institute of Accountants, the commission's prescribed method of eliminating the write-up may not accord with the best accounting practice, it is sustained by expert evidence. It is not for us to determine what is the better practice so long as the commission has not plainly adopted an obviously arbitrary plan.

[1] 77 *Journal of Accountancy,* 266.
[2] 62 PUR(NS) 65, 66 S Ct 393.
[3] Northwestern Electric Co. *v.* Federal Power Commission (1944) 321 US 119, 52 PUR(NS) 86, 64 S Ct 451.

George O. May, in reviewing this decision, stated[4] that the court's comments that the method may not accord with the best accounting practice do not err on the side of overstatement.

The two commissions whose orders were thus upheld by the Supreme Court were created as administrative agencies of Congress during the time when the "fair value" concept of Smyth *v.* Ames[5] was still the law of the land as far as the interpretations of the Supreme Court were concerned.

IT is worth while, I think, to recall the elements of fair value, as set forth in that decision:

> The original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

None of us would question the right of Congress or of the various legislatures to set up other standards of values, subject to the judicial review of our courts. Such express legislative action was not taken, however, and the Federal Power Commission and the Federal Communications Commission have avowedly set up the single standard of value of the depreciated original cost of property by the use of their own administrative processes.

The New York Telephone Company Case is a good example of the processes involved. The Communications Act of 1934 gave the commission the right to determine "just and reasonable charges" for the companies under its jurisdiction and also to prescribe the forms of their accounts. The burden of proof to justify every accounting entry questioned by the commission was put on the person making the entry, and the entry might be suspended pending submission of proof.

UNDER this sweeping delegation of authority, the commission prescribed a uniform system of accounts for telephone companies,[6] to be effective January 1, 1936. This system provided that each utility should retroactively determine the original cost of its utility plant when first devoted to public service and that the differences between such original cost and the utility's book cost should be segregated in

[4] 77 *Journal of Accountancy*, 372.

[5] Smyth *v.* Ames (1898) 169 US 466, 42 L ed 819.

[6] Adopted June 19, 1935, 1 FCC 45.

¶ *". . . accountants have a peculiar interest and responsibility to consider seriously the problems which arise from current attempts to use control of accounting procedures as the most effective means of regulation. This involves the replacement of regulation by law, approved and interpreted by the courts, by regulation through the establishment of accounting policies, determined by each administrative agency for and by itself without reference to established principles of accounting."*

Account 100.4—Telephone Plant Acquisition Adjustment—where it should be subject to the disposition of the commission.

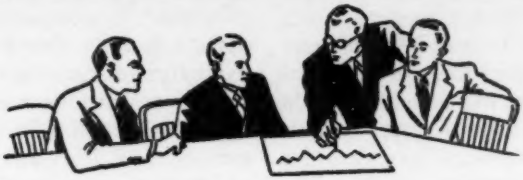
This order was stayed because of proceedings instituted by the American Telephone and Telegraph Company[7] and did not become effective until January 1, 1937.

The American Telephone Case was carried to the Supreme Court, the companies claiming that the accounting system would prevent them from recording their actual investment in their accounts "with the result that these accounts would not correctly exhibit their financial situation." The court held that this consequence would not follow but that only such an amount would be written off "as appears to be a fictitious or paper increment," but before setting forth this interpretation it took the unusual action, "to avoid misunderstanding and to give assurance to the companies," of requesting the Assistant Attorney General representing the government to reduce to writing his statement in that regard in behalf of the commission. He stated "that amounts included in Account 100.4 that are deemed, after a fair consideration of all the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with paragraph (C) of Account 100.4, provision will be made for their amortization." This statement was accepted "as an administrative construction binding upon the commission in its future dealings with the companies."

[7] American Teleph. & Teleg. Co. *v.* United States (1936) 299 US 232, 16 PUR(NS) 225.

THIS long background is necessary to an understanding of the New York Telephone Company Case. That company had, ten years prior to the adoption of the uniform system of accounts and while it was under the jurisdiction of the Interstate Commerce Commission, bought certain telephone property from its parent, American Telephone and Telegraph Company. It had paid for such property, "structural value" being estimated cost of reproduction less deterioration, an amount more than $4,000,000 in excess of original cost to its parent company, less depreciation accrued by that company. The New York Company then applied to this property the same depreciation rates as it applied to similar property purchased new, and, as such property was retired, it charged the "structural value" against the depreciation reserve. As of January 1, 1937, it determined the excess book cost of property remaining in service and transferred this excess to Account 100.4, which it then began to amortize.

Without describing the argument in the case, the Supreme Court upheld the commission that the entire amount of $4,166,510.57 (the excess cost before any retirements) represented a fictitious value and must be charged to surplus. Mr. Chief Justice Stone dissented, referring to the stipulation in the American Company Case and stating that an account which has been lawfully established under Interstate Commerce regulations could not be written off unless the Federal Communications Commission, after a "fair consideration of all the circumstances," found that the difference between the original cost and the price claimed to have been paid is not "a true increment of value."



Principles of Accounting

"THERE is little evidence that the partly tolerant and partly contemptuous attitude of many lawyers toward accounting has changed. As was recently said, 'Accounting has become an important social force, but its maximum effectiveness cannot be achieved until its principles are understood and implemented by the law.'"

THIS decision is very satisfactory to those regulatory agencies which insist that a utility's books must reflect its rate base, and its rate base alone. Consider that this is not a rate case but one to enforce an accounting order and you will find that it is well adapted to secure a sympathetic decision. All of us recoil from the idea that rates should be based on the capitalization of profits to an affiliate to an extent that we can understand the agreement of the Supreme Court in the commission's order.

And this is where the writer takes issue with those prominent members of the accounting profession who decry the violations of accounting principles by regulatory agencies. Instead of denouncing the efforts of commissions to have original cost recorded on a utility's books and saying that there is no such requirement in accounting practice, they should understand that accounting for a regulated industry is different from that for a nonregulated industry, that original cost is an essential element in the determination of value and the fixing of rates, and that a commission should be able to determine this element accurately and quickly from the utility's own books. Then, just as there are elements in determining a corporation's taxes which are not booked and other book accounts not considered in fixing taxes, it will be possible to present in a rate case matters that are not booked (such as reproduction cost) as well as to ask consideration of accounts booked which do not form part of original cost (such as acquisition costs).

To state, as William A. Paton does in "Accounting Policies of the Federal Power Commission—A Critique,"[8] that he has "failed to find a single clear-cut statement which indicates that the disclosing of predecessor cost on the books of the present owner serves any accounting purpose whatsoever" makes no differentiation between transactions among affiliates and those entered into at arms' length.

[8] 77 *Journal of Accountancy*, 433.

Under his thinking it would seem entirely proper, in a period of rising prices, to transfer a unit of property backward and forward, and as long as the market value was there it would be entirely proper to base rates on such recorded cost.

Before we can ask the courts and the legal profession to protect us from arbitrary accounting practices, accountants must set up standard accounting principles applicable to regulated industry, recognizing that the principles "most useful for the economy as a whole" are not necessarily valid in the case of public utilities or expressive of the social concepts governing utility regulation.

If we do not so educate ourselves and the courts, we shall find that we are just at the beginning of the use of control of accounting as a short cut to the imposition of regulatory theories. Accounting is being used as a tool to express a new conception of the relationship between the investor and the customer of a public utility.

THIS new conception is far removed from that held by the Supreme Court in 1926 when it stated:

> Customers pay for service; not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to the capital of the company. By paying bills for service, they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company.[9]

It is apparent that to a court holding such an opinion, the accounting treatment of depreciation, for instance, had little importance.

But times have changed and opinions have changed, and to the extent that in a recent article John Bauer wrote: "Fortunately, what was said in a 1926 opinion does not control now, except as it may serve common sense in establishing positive provisions for systematic rate control."[10] The accounting treatment of depreciation is now one of the most controversial questions in rate making. Some writers consider that the amounts recorded as accrued depreciation represent amortization by the customers of the investment by the shareholders and that if the utility has not, while collecting these dollars, also collected a fair return it is no concern of the rate-making body. Public utility commissions have determined that control of accounting practices allows the prescription of straight-line depreciation accounting determined retroactively and deducted from original cost in establishing the base upon which rates are to be found.

TO show the extent to which the thinking of utility management has gone, Samuel Ferguson, president of the Hartford Electric Light Company, urges that utilities "must be willing to recognize the appropriate customer equity, not in the [depreciation] reserve but in the earnings to be derived from any temporary investment of these prepaid funds. If the company (in its capacity of custodian of these funds) is permitted by the regulatory commission to lend them on demand to the company (in its managerial capacity) for temporary investment in plant, it must be willing to make payments to the customer, in the form of

[9] Public Utility Comrs. *v.* New York Teleph. Co. 271 US 23, PUR1926C 740.

[10] "Depreciation in Relation to Prudent Investment," by John Bauer, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIII, No. 9, page 540, April 27, 1944.

interest on the reserve, out of permitted return at such rate as the commission may specify." [11] Mr. Ferguson's long experience and his position in the electric utility industry add emphasis to the extent to which he is willing to recognize the interest of the customer in the accounting for depreciation accruals. He states that unless this is done we can expect an increasing infringement on the rights of the investor. In both the Natural Gas Pipeline Company Case[12] and the Hope Case,[13] the Supreme Court emphasized the statement that just and reasonable rates involved a balance of investor and consumer interests.

THERE is no present indication that the courts intend this "balancing" to destroy the rights of the investor but such may be the outcome of the trend we are discussing. That this conclusion is not exaggerated is clearly indicated in an article by Homer Kripke,[14] formerly a senior attorney on the staff of the Securities and Exchange Commission. In this article, which is exceptionally well documented as to citations of court and commission decisions on the subject of "acquisition adjustments," the author asks that regulatory bodies "abandon the present position that their accounting treatment of Account 100.5 will not be decisive for rate purposes, and that they accept the position of Commissioner Draper in the St. Croix Case that their accounting orders will be decisive for rate purposes." It is of interest that this article was referred to three times in notes to the Supreme Court's decision in the New York Telephone Company Case.

The courts have not yet given approval to another concept in this same article. Discussing the *accounting* for plant accounts, the reader is asked to agree to the following statement on which Mr. Kripke's theory depends:

> No investor in a regulated monopoly utility should be able to claim a vested right to the continuation of his investment, no matter how "legitimate" that investment may be in itself. All investments in utility companies, even those of stockholders, should be treated as debts, which the public can pay off at any time. So long as an investor gets his money back and gets a fair rate on it while it remains invested, he has no cause to complain and no vested right to any different treatment.

THE adoption of this concept would give approval to the theory that reserves for depreciation represent the amortization by the customer of the investment of the stockholder. It places the stockholders in the position of a creditor whose profits consist of a "fair return" when the utility is able

[11] "The Effect of Arbitrary Property 'Write-downs,'" by Samuel Ferguson, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIII, No. 6, page 333, March 16, 1944.

[12] Federal Power Commission *v.* Natural Gas Pipeline Co. (1942) 315 US 575, 42 PUR(NS) 129.

[13] Federal Power Commission *v.* Hope Natural Gas Co. (1944) 320 US 591, 51 PUR(NS) 193, 64 S Ct 281.

[14] "A Case Study in the Relationship of Law and Accounting," Uniform Accounts 100.5 and 107, 57 *Harvard L. Rev.* 433.

¶ "PUBLIC *utility commissions have determined that control of accounting practices allows the prescription of straight-line depreciation accounting determined retroactively and deducted from original cost in establishing the base upon which rates are to be found.*"

to earn it and who shares in the losses of unprofitable operations.

For the statement that an investment in capital stock is a corporate debt repayable by the public at any time, Mr. Kripke cites two Supreme Court decisions, each more than forty years old. He disturbs the ghost of Smyth *v.* Ames, which we have been told was permanently put to rest in the Hope decision, and also cites Cotting *v.* Kansas Stock Yards Company.[15] The former case states that a public utility was created for public purposes and that it performs a function of the state. In the latter case the court discussed the difference between a company which voluntarily undertook to do that which was proper work for the state as compared with one in which the owners have placed their property in such a position that the public has an interest in its use.

The court stated:

> While we have said again and again that one volunteering to do such service cannot be compelled to expose his property to confiscation, that he cannot be compelled to submit its use to such rates as do not pay the expenses of the work, and therefore create a constantly increasing debt which ultimately works its appropriation, still is there not force in the suggestion that as the state may do the work without profit, if he voluntarily undertakes to act for the state, he must submit to a like determination as to the paramount interests of the public? . . . It is unnecessary in this case to determine this question.

It is questionable whether the foregoing decisions support a claim that the public has a right to expropriate the capital stock of a public utility except at a price determined by law. To pay off capital stock at its book value certainly may be a destruction of value, and an even older decision held that "This power to regulate is not a power to destroy." In the writer's opinion, it is very doubtful that the court which enunciated Smyth *v.* Ames would have held that an investor had no interest other than a return on his capital.

Mr. Kripke does not say what dollars are to be returned to the investor, but it is apparent that he cannot recognize the actual dollars paid for stock bought in the market and can take no notice of price paid above par value. What he would do in the case of no par stock is left undisclosed. It probably does him no injustice to consider that the capital he would return to present owners is represented by the capital contributions of the original investors.

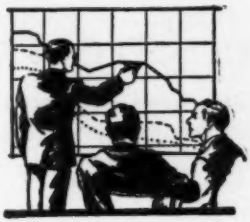
Thus, Mr. Kripke gives no consideration to changes in the value of money and most certainly none to those whose capital might be lost. To his mind, it must be impossible to lose money in a "regulated monopoly industry."

The citations in this article of decisions by the Supreme Court emphasize the fact that these ideas which seem to us so fallacious cannot be dismissed lightly. They will certainly be incorporated by some commission and, if this is done, it would appear that the courts would consider them not utterly at variance with principles of accounting.

In summation, the courts have clearly stated that when an administrative agency has made a finding, it will be overruled only if such finding is beyond that which could be made by any reasonable person. If an agency's finding is based on faulty accounting principles, it is, to a larger extent, the fault of the accounting profession. The problem was neglected for years and, on the recent occasions in which accounting

[15] (1901) 183 US 79.

experts have testified, the principles cited by them have, as far as an awareness of the problems of regulation goes, been those of 1926 or even of 1890. It is small wonder that the courts have preferred to accept the results of commission accounting rather than to act as arbitrators between the advocates of various systems of "accepted accounting principles."



Increase in Tax Burden

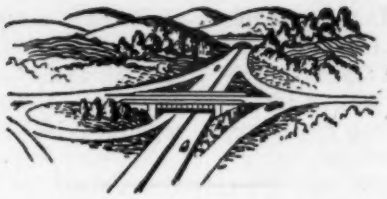
"TAXES as a whole [in 1945] consumed $161,149,830, or 9 per cent more than in 1944. The trend of taxation is clearly shown by comparing the fact that taxes consumed 27.19 per cent of gross revenues last year, compared with 26.91 per cent in 1944, 25.15 per cent in 1943, 22.13 per cent in 1942, and 19.07 per cent in 1941. As another measure of the tax burden, such payments were nearly 80 per cent greater than the earnings available to bondholders, preferred stockholders, and common stockholders combined."

—EXCERPT *from Twentieth Annual Analysis and Comparison of Major California Public Utilities, Dean Witter & Co.*

DISPOSITION OF CALIFORNIA GROSS UTILITY REVENUES IN 1945

Figures in various columns show, percentagewise, distribution of each company's total revenues.

Twelve Major California Public Utility Companies Gross Revenues of Each Company 100%	*Operating Expenses, Depreciation, And General Taxes*	*Federal Taxes on Income*	*Fixed Charges*	*Preferred Dividends Paid*	*Common Dividends Paid and Surplus*
Pacific Telephone & Telegraph Co....	76%	14%	1%	2%	7%
Pacific Gas and Electric Company	58%	21%	7%	5%	9%
Southern California Edison Co., Ltd. ..	50%	28%	7%	7%	8%
Pacific Lighting Corp. (Consolidated) .	67%	20%	4%	2%	7%
Southern California Gas Co.	74%	16%	2%	3%	5%
San Diego Gas & Electric Co.	68%	20%	4%	2%	6%
Southern Counties Gas Co.	73%	16%	2%	...	9%
Associated Telephone Co., Ltd.	61%	27%	4%	3%	5%
California Electric Power Company ..	62%	11%	8%	7%	12%
Coast Counties Gas & Electric Co.	80%	9%	2%	3%	6%
California Oregon Power Co.	56%	18%	9%	8%	9%
California Water Service Company ...	62%	12%	13%	5%	8%



For Better Street Lighting

An urge for improved highway illumination to prevent traffic fatalities.

By ED C. POWERS*

From Maine to California and from the Gulf to Canada's borders, public utility officials, with few exceptions, are cognizant of the need for more adequate street and highway safety lighting as a means of combating traffic fatalities, crime, and for the general improvement of the civic consciousness and property values of their communities and cities.

Hundreds of letters received by The Street and Traffic Safety Lighting Bureau, in response to an information-seeking guide to its nation-wide program on behalf of better street lighting, give unmistakable evidence that the problem is being approached from every feasible, economic, and civic angle.

Public utilities executives are cognizant of the need for serviceable rather than ornamental street-lighting facilities. They recognize street lights as their best medium of public relations. They realize the shortcoming of some of their present installations and are planning to make improvements as soon as it will be possible to obtain them.

Most public utility officials recognize the necessity for local newspaper and radio promotion and are willing to carry the ball either by direct action or through coöperative effort.

The important point, however, is the fact that street and highway safety lighting is receiving a lion's share of attention and study in municipalities and towns where efforts are being made to reduce traffic accidents and deaths and where crimes of violence have been attributed to inadequate street lighting in both business and residential areas.

"We are very glad to inform you that the citizens of this community have become very interested in adequate street lighting," writes E. O. Hoke, manager of the Pinole Light & Power Company, of Rodeo, California.

San Francisco is preparing to standardize its street-lighting units, both for new installations and in the replacement of older equipment, according to an official of the Pacific Gas and Electric Company. Recognition of the

*For personal note, see "Pages with the Editors."

work this company has done with relation to modern street lighting is found in the numerous requests which it has received for help from other communities in its area.

Numerous letters have been received from East coast companies also which indicate interest in the kind of street lighting that will be effective as a safety measure, rather than purely ornamental.

From Derby, Connecticut, comes a letter which states, "the cities we serve ... are fully aware that street lighting is a necessity."

"Most of the cities and towns in our area are planning extensive street lighting changes for the near future, as soon as equipment becomes available," writes the United Illuminating Company of New Haven, Connecticut, in a recent letter.

The city of Indianapolis recently placed an order for 270 new street lights, 50 of which are to be used on a previously unlighted parkway.

Fort Wayne declares it is "pushing street lighting aggressively." So is Neodesha, Kansas, while in Hagerstown, Maryland, a survey is under way of the city's entire system, with a view of improving the installation from the standpoint of traffic safety and real estate values.

EXPENDITURES for street lighting are contemplated in Niles, Michigan; in Gulfport, Mississippi, and surrounding territory; in Watertown, New York; Highpoint, North Carolina; Wilmington, North Carolina; and a new system of lights is now being installed in Zelienople, Pennsylvania.

The city of Knoxville, Tennessee, is contemplating the relighting of several of its arterial streets and some of its secondary streets.

There are many others contemplated in larger metropolitan areas which have been widely publicized throughout the industry.

The task remaining is a momentous one. There are still many communities that look upon the street light in much the same way as the art collector who views a lamp's utility by its artistic beauty instead of its lighting efficiency. But those communities are rapidly disappearing.

The value of street and highway illumination as an accident and crime reducer is widespread throughout the land. For this, the utilities can take a large share of the credit.

". . . we must reverse the trend toward economic colonialism which has characterized the period in which our great corporations have concentrated the economic power of the country in their hands. For the small business enterprises which people are seeking to preserve are not small corporations competing in a national market but regional and local businesses, producing for and distributing to their neighbors, employing their neighbors and the children of their neighbors, taking their places among the country's premier small businesses, the individually operated farms, as a part of an integrated regional economy."

—LELAND OLDS,
Chairman, Federal Power Commission.

Government Utility Happenings

Moratorium on Public Works Covers Power Agencies

VIRTUALLY all Federal agencies engaged in electric power operations are revising their plans for new projects to comply with the moratorium on public works ordered on August 5th by Reconversion Director John R. Steelman.

Among the bureaus affected by the Steelman directive are the Department of Interior's Bureau of Reclamation, Bonneville Power Administration, and Southwestern Power Administration; the Tennessee Valley Authority, the War Department's Corps of Engineers (in regard to civil works programs), and the Rural Electrification Administration.

Mr. Steelman issued the moratorium order after extended conferences with President Truman. The President previously had announced that he was considering the delay of a portion of the authorized public works program until the end of the current fiscal year. The Steelman directive, in effect, puts the job of selecting the deferrable projects into the hands of the agencies charged with carrying out the several programs.

It provides that

1. Until October 1, 1946, no contract may be awarded by any Federal agency for new construction without special authorization from Mr. Steelman's Office of War Mobilization and Reconversion. (Contracts already awarded before the order was issued were not affected.)

2. Federal agencies must review their construction programs, eliminating all projects which can be deferred until April 1, 1947, or later, and submit schedules of both the postponable and the nondeferrable projects to the Civilian Production Administration by August 31, 1946. These revised programs will then be reviewed by CPA, with the final decision as to just what programs may be started on October 1st resting with OWMR.

Only five types of general construction by the government were exempted from the provisions of the directive. They were: work on urgently needed veterans' hospitals, overseas military facilities, the Army's atomic bomb project, veterans' housing, and construction of access roads to new timber lands.

MR. STEELMAN outlined the objectives of the cut-back order in a statement to the press, which said, in part:

> Construction agencies of the Federal government have reported a proposed Federal construction program valued at approximately $1,600,000,000 for the fiscal year of 1947. While much of this construction must go forward because it is needed for the maintenance of national health, safety, and other essential services, the Federal government has an inescapable responsibility to postpone all but the most urgent projects while the present dangerous inflationary pressures exist.
>
> President Truman has made it quite clear that every agency of the Federal government must do everything within its power to reduce Federal expenditures in the current fiscal year. Our objective is to reduce the Federal public works program from $1,600,000,000 to $900,000,000. I have full confidence that the agencies of the Federal government will exert every effort to comply with the spirit and intent of the directive I have issued in compliance with the President's orders.

Each agency affected by the order received letters of transmittal explaining the President's stand on the need for cutting expenditures. Some agencies, among

them the Bureau of Reclamation, TVA, and the Army Engineers, also were given recommendations for holding back specific amounts or deferring particular projects.

The Bureau of Reclamation, for example, has been following a program calling for the expenditure of some $170,000,000 on construction projects in this fiscal year. The bureau was advised to postpone until after April 1st sufficient projects to reduce this program to nearly $86,000,000, a figure which Interior officials said had been approximated by contracts already awarded. They estimated that the bureau's programs for development of the Columbia river basin, the Central valley of California, and the Missouri river basin will be the major projects to be curtailed by the postponement.

Incidentally, the bureau's power program will be little affected by these cut backs. Contracts for major power developments, such as those in Central valley, already have been let. Other projects of this type, including those in the Missouri basin, have not yet advanced to the point where installation of power facilities is imminent.

THE War Department was instructed to reduce its planned expenditures of approximately $309,000,000 for all civil works programs this year to $185,000,000. This, of course, means an extensive revision of the Engineers' schedule of rivers and harbors, and flood-control projects will be in order.

Interesting complications probably will result from the White House recommendation to TVA Chairman Lilienthal that he postpone the start of construction on the Upper Holston dam in eastern Tennessee. This is one of the two TVA dams for which funds were appropriated for TVA by the recent session of Congress.

Chairman Lilienthal told a congressional committee that, in view of shortages of materials and man power, work on the Upper Holston project should be postponed until the other (Watauga) dam had been completed. His remarks touched off a debate with Senator Kenneth McKellar, Democrat of Tennessee, who insisted that work be started promptly on both projects. Now the Senator has announced that he will contest the postponement proposed by President Truman.

"I will take up the matter with the President," he said. "Those dams ought to be built at once."

No power agency of the Interior Department, other than the Bureau of Reclamation, was instructed to make specified reductions in its programs, being urged merely to cut back items not absolutely essential. The Southwestern Power Administration, which had awarded no contracts under its $7,500,000 program for transmission line construction, is expected to defer a large part, if not all, of its plans for these lines.

On the other hand, Administrator Paul Raver declared that all of the construction planned by the Bonneville Power Administration appeared to be "essential."

He conceded, however, that his staff was studying its plans with a view to complying with the postponement provisions of the Steelman directive.

FIRST reaction of Rural Electrification Administration officials was one of uncertainty as to the method by which the directive was to be applied to activities of their agency. It had been generally thought, however, that REA temporarily would have to discontinue approving borrowers' contracts for construction financed by agency loans. This step apparently was obviated by the section of the directive forbidding any Federal agency from entering into any agreement with "a state or local government or with a coöperative or public utility involving the provision of Federal funds in whole or in part" until October 1st.

However, in a statement on August 15th, Mr. Steelman announced that the freeze order on public works would not "restrict the loan programs of Federal agencies such as the Rural Electrification Administration." Such programs, he said, are in the hands of state and local

groups, and "not subject to Federal review."

Mr. Steelman noted that the President had requested the lending agencies to "seek the coöperation of state and local groups" in reducing their proposed construction "to a minimum consistent with the curtailed Federal public works program."

There was some skepticism in certain unofficial quarters in Washington as to the over-all effects of the President's moratorium plan. Some observers pointed out that, while the President and his fiscal advisers undoubtedly were determined to defer public works expenditures, the White House plan might be jammed if full coöperation were not received from the agencies involved. For example, it was noted, a single bureau might insist that all, or the greater part, of its construction program was essential, thus leaving CPA or OWMR with the well-nigh impossible task of reducing that agency's program.

Bonneville Proposes New Rates For Secondary Energy

BONNEVILLE POWER ADMINISTRATION'S proposed new rate schedule for sales of secondary energy was discussed recently by Administrator Raver. His statement followed the filing of the new rate with the Federal Power Commission.

No change in the present Bonneville rate of $17.50 per kilowatt year for firm power from the Bonneville and Grand Coulee plants was involved. The agency asked for authority to charge a flat rate of one mill per kilowatt hour for additional energy produced at these plants during periods of high-water flow.

Bonneville bases its estimates of firm power capacity on the minimum water year recorded by the agency, when the Columbia river plants were reported capable of producing 1,067,000 kilowatts.

Administrator Raver said that, in addition to the firm power capacity, "approximately 75,000 kilowatts of secondary energy is now available during most years." He added the following:

> As the firm power capacity is increased by installation of additional generators at Grand Coulee and construction of new Columbia basin projects, the amount of available secondary energy also will be increased. Since this secondary energy is subject to the flow of the river and is not available during low-water periods in certain years, it cannot be sold as firm power.

HE declared that the agency proposes to market such power at the one-mill rate for use in industrial operations which can be shut down for periods up to six months without serious effects. The proposed rate schedule specifies that purchasers of secondary energy must either purchase firm power also, or maintain stand-by equipment capable of supplying equivalent process requirements when secondary energy is not available.

Other provisions of the new schedule include a guaranty of the delivery of energy for not less than one hundred and eighty days in each calendar year, except as prevented by uncontrollable factors. Over periods of ten years or more, availability of secondary energy is assured for only 80 per cent of the time. Such power is to be made available only to purchasers contracting for 25,000 kilowatts or more.

If the new rates are approved, the Bonneville Administrator said, secondary energy will be utilized immediately in conjunction with prime power sales for aluminum production and, later, for electric boiler operation in connection with industrial process loads for which stand-by facilities can be maintained.

Pending approval of the secondary rate, Bonneville has executed a contract with the Permanente Metals Corporation of Spokane, Washington, the Henry Kaiser company which has leased government-owned aluminum plants in that area.

The Kaiser firm is using a total of 60,000 kilowatts of Bonneville power now and is expected to require about 250,000 kilowatts at full capacity, Administrator Raver announced. Under terms of a 10-year contract, to become effective with FPC approval of the new rate, Bonneville will supply up to 32,500 kilo-

watts for each of the Permanente plant's six potlines, he said.

The Bonneville chief reported that the aluminum plant is scheduled to get into full operation in early 1947.

FPC Concludes Natural Gas Probe Hearings

HEARINGS in the Federal Power Commission's natural gas investigation were closed at Washington, D. C., on August 2nd. The records of the proceedings, however, will be kept open for additional statements until October 1st, it was announced.

The Washington sessions, last in a series staged in cities in natural gas production and consuming areas, were closed out with a statement by Federal Power Commissioner Nelson Lee Smith. The broad scope of the inquiry, which developed testimony from numerous groups with direct and indirect interests in gas operations, was "amply justified" by the results, Commissioner Smith declared. He held that such an investigation was the only means whereby a "comprehensive understanding" of the problems involved could be obtained. He continued:

> A more limited approach would necessarily have left uncertain the significance of any features of the entire interrelated process of natural gas production, transmission, distribution, and marketing which were omitted. It is clear that, because of the interdependence of these several processes, there must be knowledge of the whole if any part is to be fully understood. Also, it seems not too much to say—as indeed many representatives of the gas industry have observed—that this investigation has enabled the industry itself, as well as the commission, to gain a better insight into the problems relating to the natural gas industry and its proper regulation in the public interest.

PARTICIPANTS in the hearings were advised that they might file with the commission "concise summary statements." Parties intending to submit reviews of their testimony and opinions were directed to notify FPC of their intention to do so by September 1st. The commission will require 200 copies of each statement for its own use, it was noted.

Before transmitting a report to Congress, FPC will advise all those who participated in the hearings as to the commission's principal findings in the investigation, Commissioner Smith said. Because of the large amount of testimony received, it is impossible to set the date when FPC will be able to complete its report, he added.

Downey Determined to Hold Reclamation Hearings

BALKED in his effort to obtain approval for a Senate investigation of Bureau of Reclamation water contract policies in California's Central valley, Senator Sheridan Downey has declared that he may conduct hearings along these lines on his own initiative.

Sources close to the Democratic legislator from California say that before he left Washington at the end of the congressional session he was making plans which called for hearings in the Central valley area during October.

During the closing sessions of the Senate that body's Public Lands Committee approved a resolution submitted by Senator Downey providing for an official investigation by members of that committee.

The resolution came to the Senate floor under the calendar procedure, which permitted a single objection to prevent its immediate consideration. Objection was made by Senator LaFollette, Republican of Wisconsin.

When he introduced his resolution, Senator Downey said that he was interested chiefly in the terms of Federal contracts for irrigation water sought by Central valley farmers. It was noted by some observers, however, that these contracts necessarily are coördinated with Reclamation Bureau sales of power from the Central valley's multiple-purpose developments. Any investigation, it was contended, therefore would have to include a study of power policies in the area.

Wire and Wireless Communication

TELEPHONE recording devices have legitimate commercial and governmental purposes which warrant their use in regular telephone service, declared the Federal Communications Commission on August 8th in proposing to authorize their utilization in interstate and foreign message toll service, under conditions which will assure that parties to such conversations have knowledge that these appliances are employed.

The commission is of the opinion that under such conditions the use of a telephone recording device does not violate § 605 of the Communications Act which prohibits intercepting and divulging private wire and radio communications. Accordingly, it proposes to declare "unjust and unreasonable, and therefore unlawful," any tariff regulations now on file with it that bar the use of recording devices in the manner contemplated.

"There exists a real need and demand" for telephone recorders, the commission said, concluding:

> The use of recording devices in connection with interstate and foreign message toll telephone service should be authorized, provided such use is accompanied by adequate notice to all parties to the telephone conversation that the conversation is being recorded. Adequate notice will be given by the use of an automatic tone warning device, which would automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use, supplemented by a telephone directory listing plan which provides for the placing of an asterisk or other special indicator alongside the names of telephone subscribers who have recording devices. Both the telephone companies and the recorder manufacturers should also undertake a publicity program designed to inform telephone users generally of the use of telephone recording devices and the import of the warning signal.

THE commission pointed out that there are three types of sound recording devices—the acoustic type, which consists of a microphone placed near enough to the telephone to pick up conversation; the inductive type, which receives signals without any direct physical contact; and the direct physical connection. The commission stated that "one important precaution that can be taken against the unauthorized use of telephone recording devices is to require that they be physically connected to the telephone line." It therefore decided that "no recording device should be used in connection with interstate and foreign message toll telephone service unless it is physically connected to the telephone line . . . all of this connecting equipment, as distinguished from the recording apparatus itself, should be provided, installed, and maintained by the telephone companies."

"The use of recording devices," the commission added, "does not impair the quality of such telephone service if proper safeguards are employed in the equipment by which the recording devices are connected to the telephone."

These proposals are the result of an investigation initiated by the commission on October 31, 1945. It was prompted by

conflict between the presently effective telephone tariff provisions and the growing demand for telephone recording devices. Resultant hearings brought representation from the Bell system companies, United States Independent Telephone Association, National Association of Railroad and Utilities Commissioners, Thomas A. Edison, Inc., the Soundscriber Corporation, the Dictaphone Corporation, and others.

Testimony shows that telephone recording devices, in use since 1916, were popularized in World War II and have since had increasing demand. Three manufacturers estimated that about 19,000 instruments are in current use, more than a third of which were sold to the military and the remainder to various business organizations.

With the exception of installations for two newspapers, the Bell system has not itself supplied recording devices. However, the Bell system, along with other participants to this proceeding, offered no direct opposition to the use of recorders; the only point of issue appeared to be the conditions under which their use should be authorized. The Bell companies recognized the demand for recorders but, at the same time, were apprehensive that they might endanger the privacy and informality of telephone conversations. Manufacturers of recorders felt that their product enhances the usefulness of telephone service but is being hampered by present tariff restrictions.

THE Navy Department characterized telephone recorders as "one of the most valuable modern administrative aids." Last year it had more than 1,600 recorders in use, principally at yards, supply offices, material inspection services, clothing depots, ordnance plants, and air stations. The Signal Corps, which has been using these devices since 1918, has furnished the War Department with about 2,000, and requests continue to mount.

The commission emphasized that it is keenly appreciative of the importance and desirability of privacy in telephone conversations. "Such conversations," it says, "should be free from any listening in by others that is not done with the knowledge and authorization of the parties to the call." Hence its proposal that recorders should be permitted only when parties are aware that their conversation is being recorded.

To pave the way for regular recorder service, the commission in its proposed report concluded that telephone companies subject to the Communications Act should file appropriate tariff regulations under § 203 of the Communications Act, authorizing the use of telephone recording devices under the conditions set forth in the commission's opinion. Meanwhile, parties concerned have until September 20th next to register objections to its proposed report.

* * * *

INCREASED production of telephone instruments enabled the Civilian Production Administration on August 7th to relax preference regulations under which telephone subscribers receive their phones.

According to a ruling, telephone subscribers who move to a new location in the same central office area will be placed in the first order of preference for restoration of their telephone service.

CPA officials estimated the amendment would affect 35,000 subscribers immediately and the same number each month from now on. Until now a subscriber moving to a new location within the same central office area could not have his telephone transferred, but had to wait his turn for reinstatement of services under the order of preference established by the agency's utilities order.

* * * *

DEMANDS for new telephones in the South, as related to the per cent now in service, are approximately twice that in any other region. This demand for new phones, heaviest in the nation, has pushed Southern Bell's total to more than 2,000,000 telephones, that number having been reached in late June. This covers nine states from Kentucky through Florida and North Carolina through Louisi-

ana. In Georgia telephones now total 315,000, an increase of 110 per cent in ten years, the total being 151,000 a decade ago. Atlanta now has 132,600 telephones, almost as many as the entire state possessed ten years ago, a growth of 87 per cent from the total of 71,000 ten years ago.

"Short-haul" business within Georgia is up 30 per cent over one year ago.

All these add up to a very dramatic reading of business and population growths on one of the best barometers available. These facts were presented to the board of directors of Southern Bell, meeting in Atlanta last month, by Hal Dumas, president.

Southern Bell's problems are not so much a shortage of instruments, of which there is now a good supply. The real difficulty is brought about by shortages of copper, lead, and, of all things, cotton yarn which is used in switchboard cables. There also is a shortage in buildings to house extra exchange machinery and switchboards.

* * * *

THE California Supreme Court made it possible last month to prosecute bookmakers who conduct business over private telephones with the owner's consent. The ruling involved the case of Morris Trieber, who allegedly conducted a book from apartments on Haight and Hickory streets in San Francisco. He hired a telephone company employee to run two extensions into his apartment, then ran others into other apartments. He obtained the consent of those residing in these apartments to give their telephone numbers to his clients. He paid the bills.

A felony indictment for wire tapping was returned against him in December, 1944. On February 1, 1945, Superior Judge Edward P. Murphy set aside the indictment, deciding that consent eliminated the criminal factor. The appellate court upheld Judge Murphy.

District Attorney Edmund Gerald Brown carried the case to the high court, where last month's decision was a reversal of the lower rulings.

Assistant District Attorney Thomas C. Lynch said the decision was a far-reaching one, being applicable to all cases of the kind. However, it will be necessary to fight the circumstances on their merits.

Trieber, he said, would be brought to trial.

* * * *

THE insurgent French communications workers agreed on August 3rd to go back to work beginning at 4 AM August 4th after they had failed to receive support from parent labor organizations or from the government, which refused to negotiate with them until they ended their walkout.

Tentative harmony prevailed at the end of a turbulent day of meetings between the Finance Minister and the leaders of the Federation of Posts, Telephone, and Telegraph Workers. A factor in establishing harmony was the action on August 3rd by the Constituent Assembly in extending the original government proposal to raise wages of all government employees 25 per cent to cover certain special allowances that government workers receive.

Estimates varied on how widespread the stoppage was. The strikers claimed that 22 departments of the country and 18 cities suffered full stoppage of communications; in several other cities, including Marseilles, it was only partly effective.

* * * *

THE Hercules Powder Company last month announced it was planning to install air-to-ground telephone service in its large transport plane.

Terming it the "first of its kind in the country," the company said the 2-way service had been approved by the Federal Communications Commission and would be installed as soon as equipment could be built.

The plane telephone will be similar to the ship-to-shore service by which ships at sea make radio connection with shore stations. The radiotelephone differs from a home radio set in that a home radio can pick up various wave lengths and frequencies while the radiotelephone set can

pick up only the ground frequency to which its crystal has been set.

* * * *

MORE efficient railroad operation through the use of radiotelephones on freight trains was foreseen by Western Electric Company after tests conducted with the Northern Pacific Railway Company over lines between Seattle and Yakima, Washington, and between Seattle and Portland, Oregon.

The new radiotelephone equipment, designed by Bell Telephone Laboratories, consists of a radio transmitter and receiver, handset-type microphone with push-to-talk button, loud-speakers and control unit, power supply equipment, and antenna.

Railroads often use two locomotives over mountain grades, requiring coördination of throttle positions in both engines, it was pointed out. This has proved difficult when the engines are half a mile apart and rounding a curve. The new radiotelephone equipment makes it possible to start the trains smoothly with minimum danger of "breaks-in-two."

From the train-to-station tests, transmission to 12 miles was maintained with the station from the train, even up mountain grades. Beyond that, good communications were interspersed with dead spots up to 24 miles.

Besides the time saving, more satisfactory operations were assured in pulling into sidings to let other trains pass, in determining whether the rear end of the train was on a siding, and in picking up additional cars, picking up trainmen, preparing for cut-in of helper engines, in switching operations, and in train-to-yard contacts.

* * * *

THE National Association of Railroad and Utilities Commissioners reecntly announced receipt of a letter, dated August 6th, from the Federal Communications Commission, relative to the forthcoming general telegraph investigation:

> As the state commissions have been advised, this commission has instituted a comprehensive investigation into the practices, operations, regulations, facilities, services, patents, contracts, management, policies, and all activities, arrangements, and plans of the Western Union Telegraph Company for or in connection with, or in any way affecting interstate telegraph communication service within the United States. Copies of the commission's order of June 4, 1946, in FCC Docket No. 7618, providing for this investigation have been sent to all the state commissions, together with the commission's opinion of the same date in FCC Docket No. 7445, regarding Western Union's petition for a rate increase. The reasons for instituting the investigation in Docket No. 7618 are set forth in that opinion.
>
> We want to invite the coöperation and assistance of the state commissions in this investigation. As the investigation progresses, we may desire to request specific kinds of assistance on specific problems. But at the present stage of the proceeding, it will be very helpful to us to receive, and we would hereby like to request, from the state commissions, any information, observations, comments, or suggestions about the operations and services of Western Union in their state which they may consider material to the investigation.

* * * *

TELEVISION as an advertising medium is expected to emerge soon from its enforced inertia of the war years, when allocations of materials abridged service and halted output of telesets for the consumer market, as television receiver manufacturers are preparing to expand production next month, it was learned recently. It is estimated that 100,000 sets will be on the market before the first of the year, while this number is expected to increase to almost half a million during 1947. At present there are 5,000 sets in the metropolitan area of New York city.

With these sets concentrated in the metropolitan area and the East, which have the richest market potential in the country, the gain in impressions the additional receivers will bring is seen as the necessary incentive to interest advertisers in the medium. The New York area is serviced by six operating stations in the East, three of them in New York. In addition, now pending before the Federal Communications Commission are 76 applications for transmitters in 42 cities, all of which are expected to be cleared before the end of the year.

Financial News and Comment

By OWEN ELY

Consolidated Edison May Adopt Straight-line Depreciation

THE issue over retroactive straight-line depreciation has come to the fore again. It will be recalled that several years ago considerable interest was aroused when Niagara Hudson Power was told by the New York state commission that it should increase the system's reserves very substantially in order to conform to the commission's standards regarding accrued straight-line reserves. (However, Brooklyn Union Gas, Long Island Lighting, and other companies had already adjusted their reserves.) Chairman Maltbie's ideas regarding depreciation seemed to have agreed with the judgments reached by George Goldthwaite, with whom he was associated some years ago. (The commission chairman, Mr. Maltbie, was himself considered an accounting authority as far back as 1907-15.)

Mr. Goldthwaite, a member of the firm of Hine, Goldthwaite & Mylott, public utility consultants at 7 Dey street, New York, has appeared as an expert witness for the New York commission, particularly with reference to depreciation accounting problems, a number of times. Recently his advice was sought in connection with the commission's hearings on the refunding program of Consolidated Edison of New York—first with reference to the $9,000,000 bond issue of a subsidiary, Yonkers Electric Light & Power (to be guaranteed by Consolidated Edison), and, secondly, with reference to the $290,000,000 refunding program of Edison itself.

The commission in a resolution dated June 12th and amended July 11th authorized the Yonkers Company to invite competitive bids for its bond issue on condition that prior to its issuance the company should transfer $2,900,000 from "Earned Surplus" to "Earned Surplus—Special," the subaccount to be used "exclusively to increase the depreciation reserve in such amount as the commission shall order after investigation."

This adjustment was, however, overshadowed by the proposed accounting changes affecting the parent company in connection with the hearings on its own huge refunding program. At the August 1st hearing (PSC No. 12515), Mr. Goldthwaite testified that he had made "tentative" estimates of accrued depreciation of utility plant which, in his opinion, indicated a deficiency as at June 30, 1946, in the depreciation reserve of the Consolidated Edison Company of $160,334,000. Shortages were also estimated for the Yonkers Company at $2,795,000; for Westchester Lighting Company at $11,770,000; and for New York Steam Corporation at $10,532,000. Mr. Goldthwaite also testified that the annual depreciation accrued by Consolidated Edison Company for the calendar year 1945 would have been only about $25,000,000 on the straight-line basis, as compared with the reported accrual of approximately $29,100,000. (This did not imply any criticism.)

Mr. Goldthwaite further testified that in his opinion the book cost of the East river generating station was in excess of reasonable cost by $17,000,000 (which, however, can be reduced to $9,500,000 by an offsetting depreciation adjustment). Mr. Mylott also testified that the book value of the stocks of the three remaining

subsidiaries was excessive in the amount of $17,465,000.

THE net effect of these various proposed adjustments would mean a reduction in the net utility plant account of Consolidated Edison (together with the investment in subsidiaries) of about $238,800,000, which figure also includes refinancing costs of $39,353,733 and "questioned items" of $12,141,279. In any event, since the company has an earned surplus of only $87,817,307, this would be sufficient to wipe out the earned surplus and cut heavily into the book value of $392,095,820 assigned to the common stock. While the witnesses for the commission have not stated the details of the lump sum estimates or questioned items (except as to component items aggregating $12,141,279), and the Consolidated Edison Company has not accepted or concurred in the opinions and estimates of these witnesses, the management has under consideration the calling of a special meeting of stockholders for the purpose of amending its certificate of incorporation by changing the statement therein respecting capital, and reducing capital by approximately $160,000,000, in order to provide for such depreciation and accounting adjustments as may hereafter "be determined to be proper and necessary."

In a rate case (No. 12455) proceeding simultaneously before the commission, a witness for Consolidated Edison indicated that the company proposed to establish new rate classifications which would reduce charges for electric service by some $6,000,000 annually.

THE question seems to arise whether the refunding program was "worth the candle." Assuming that the company could do its refunding on an average 2.75 per cent net yield basis (which is problematical because of the average long maturity proposed), the saving would approximate $2,175,000. (One witness' estimate was $2,160,586 based on 2⅝ per cent bonds.) Refunding savings on the preferred stock might amount to 1½ per cent or about $3,300,000. (This operation would, it is assumed, follow at some later date.) After tax adjustments the net aggregate saving might approximate $4,150,000. On the other hand the rate cut after adjustment for tax saving of 38 per cent would initially cost the company $3,700,000—though it is usually assumed that lower rates stimulate business so that some part of the loss is recouped.

Thus it appears that the company has paid a heavy price to gain approval of its financing. Not only would the immediate monetary gain be small after passing most of the benefits to consumers, but the result of the accounting adjustment proposed by the commission would have a serious effect on the rate base and the allowable earnings for "fair return." On the basis of the present book value (Consolidated Company basis) net utility plant at the end of 1945 was $1,010,000,000, to which might be added an arbitrarily estimated $90,000,000 for working capital, making a total of $1,100,000,000. Operating income for the year approximated $54,000,000 so that the net return was slightly under 5 per cent.

This result will change drastically, however, if the proposed adjustments are put into effect. While the estimate of a total shortage of $238,800,000 cannot accurately be applied to the consolidated balance sheet figures, we shall assume for convenience that it may be so applied, reducing the net investment in plant to $861,000,000. Figuring on a very approximate basis, operating earnings would on the one hand be reduced $3,720,000 as a result of the rate cut (less 38 per cent tax savings), while on the other hand they would be increased some $3,100,000 by reduced depreciation accruals (less increased taxes). Assuming some recovery due to increased business, we can estimate that earnings would remain about the same. But the rate of return, instead of being under 5 per cent, would now amount to 6¼ per cent.

THE question remains as to whether the refunding program was advisable in view of the "hard bargain" which the state commission was prepared to drive in forcing full application of

straight-line depreciation. (It could, of course, use such accounting in its own calculations for rate-fixing purposes.) The answer appears to be that the company was not altogether sure that it wanted to proceed. The refunding program might normally have been consummated almost a year ago. The company apparently decided to "feel its way" with the small Yonkers financing. Approval of this small issue was reported to have been delayed at Albany for several months for reasons not clear. Meanwhile the commission consulted its staff and the independent experts on the accounting changes deemed desirable for the entire program.

Finally, although it had not yet approved the Yonkers financing, the commission issued a statement to the newspapers, blaming the company for postponing its major financing and risking loss of favorable market conditions. Under this pressure the company immediately filed its big program and the commission followed suit by releasing the Yonkers deal. (The latter ran into some "heavy weather" with the SEC, but that is a separate story.)

Returning to the question of straight-line depreciation, Mr. Goldthwaite's views were originally expressed as far back as 1923. In the gas rate case (No. 9733) of the Rochester Gas & Electric Corporation in 1939, he testified (SM 3850) as follows:

> Thus, in my opinion, any study of present value is nonsensical which does not take into account future life expectancy. In view of the vast amount of statistical experience, as well as common observation on the relationship between age and future life expectancy, I believe it is wholly irrational to prepare a valuation study which does not take into account the age of the property. . . . Having studied the matter at considerable length and over a long period of years, I believe the straight-line method is reasonable both for accounting and for depreciation study purposes. If applied properly the results will be absolutely equitable between producers and consumers regardless of minor deviations from precise theoretical accuracy and there is no other method within my observation which is likely to come closer to theoretical accuracy, and it has furthermore the merit of simplicity.

MR. GOLDTHWAITE criticized the retirement reserve method of providing depreciation (now largely abandoned by utility companies). He also held that the sinking-fund method is illogical because it provides (in the sum of increasing depreciation and declining earnings) equal annual payments over the life of the property, so that the same amount is paid (as a theoretical rental) on the last year when the machine is practically worn out and obsolete as when it was new. In contrast, the straight-line method results in decreasing "rental" payments by the user (the sum of constant depreciation plus declining earnings) as the value of the machine decreases. (SM 3855-62.) To find accrued depreciation he used, in addition to his observation and experience, the associated mortality characteristics together with the known age of the property. An error either in life or salvage estimate, which would produce too much accrued depreciation, would have the effect of allowing the company excessive annual depreciation, and vice versa. Thus from a rate case standpoint errors of judgment tend to offset each other on the straight-line basis.

Space is lacking in this article to analyze Mr. Goldthwaite's views in detail. (The department has commented from time to time on straight-line depreciation, particularly in connection with the NARUC study sometime ago.) It is true that straight-line depreciation is largely used in the industrial field. In the utility industry's transition from the retirement reserve method to the depreciation method, it is possible that the sinking-fund method (first used before 1930 to any considerable extent for regulatory procedure in California and Wisconsin) has gained popularity because it results in a less radical readjustment of reserves than straight-line depreciation. On the other hand, it also tends to result in the understatement of earnings through overaccruals, which may be desirable from the stockholders' standpoint, if not the consumers'.

It is difficult to appraise the relative extent to which regulatory authorities

favor one method or the other. The Federal Power Commission, the Federal Communications Commission, and the Interstate Commerce Commission are said to favor straight-line depreciation (although the ICC has been very slow in forcing its adoption by the railroads). The Securities and Exchange Commission has not fully clarified its views. The New York commission appears to have been a leader among the state commissions in favoring its adoption.

Wall Street Analyses of Utility Securities

SHIELDS & Co. has prepared a summary of preferred and common stock issues in 1946 (to July 31st). Of the 213 common stock issues reviewed, the following results were obtained by comparing the offering price with the market price on August 1st: 85 (39.9 per cent) showed an advance over the offering price; 88 (41.3 per cent) showed a decline; and 40 (18.8 per cent) were approximately unchanged from the offering price. Of the 92 preferred stock issues reviewed 33 (35.8 per cent) showed an advance over the offering price; 36 (39.2 per cent) showed a decline; and 23 (25 per cent) were approximately unchanged.

Of the 15 utility stock offerings only 3—Tennessee Gas & Transmission (January), Dayton Power & Light (June), and El Paso Natural Gas (July) showed gains over the offering prices. Three others, Arkansas-Missouri Power (May), Pacific Gas and Electric (May), and Central Ohio Light & Power (July) showed practically no change in the offering price, while the remaining 9 issues showed declines, averaging in the neighborhood of 5-10 per cent. The study included only 3 utility preferred stock issues, all of which showed gains.

IRA HAUPT & Co. has issued a study on Pennsylvania Power & Light, describing the company's background, capital changes and accounting adjustments, the rate base and permitted earnings as determined by the Pennsylvania commission in 1945, dividend restrictions, and current earning power. The firm estimates that "earnings of around $1.90 to $2 per share for 1946 are not too much to expect, and on this basis the stock seems underpriced at 21¾ . . . there is apparently no rate base restriction on earnings until they exceed . . . $2.65 per share based on present capitalization."

First Boston Corp. has issued a 5-page study on Northern Indiana Public Service Company, including a number of tables. It concludes that, while the company's earnings will remain rather sensitive to business fluctuations, they should reflect the long-term business development expected of the territory served. Moreover, recent changes have been favorable, including (1) better control of operating expenses, (2) complete revamping of the capital structure, (3) a much sounder gas business, and (4) addition of many new residential and commercial customers through acquisition of important distributing companies.

After considering various current factors in earnings such as taxes, strikes, increased residential business, rate reductions, etc., George Perrin estimates 1946 earnings at $1.75 to $1.85. The present peculiar restrictions limit dividends to 50 per cent of available earnings for the preceding calendar year if the ratio of common stock equity to total capitalization is under 20 per cent, and 75 per cent if the ratio is between 20 per cent and 25 per cent. Since the 20 per cent ratio was first reached in May, 1946, only 25 cents was paid on June 10th (indicating an annual rate of 50 cents). However, First Boston Corp. feels that an annual rate of $1 may be expected "within a reasonably short period," with payments on a quarterly basis "after public ownership of the stock is completed."

JOSEPHTHAL & Co. has issued a 3-page study on Carolina Power & Light common stock, which is currently traded around 37¼ on a "when distributed" basis. The stock is being distributed to stockholders of National Power & Light as of August 23rd. The current price is slightly over 11 times the 1946 earnings

of $3.25 estimated by Truslow Hyde. While the company earned only $1.67 *pro forma* last year, current earnings are running almost twice as heavy because of tax savings—$1.84 in the first half, compared with 88 cents in the corresponding period of 1945. However, a rather substantial rate reduction was initiated in June so that second-half earnings are estimated at only $1.41.

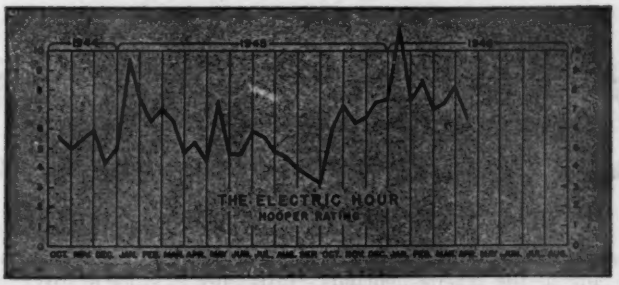
While industrial demand from textile and lumber mills may decline in the future, the company has a $4,000,000 expansion program by which it expects to connect about 25,000 new residential and rural customers; growth should also be accelerated when household and farm appliances become available, and substantial economies are expected as a result of new equipment. Josephthal & Co. concludes that the company should be able to maintain future earnings of around $3 a share, and while this would mean almost a 7 per cent return on capital, it is felt that such a level of earnings can be justified by low plant value (at original cost) and a favorable rate structure.

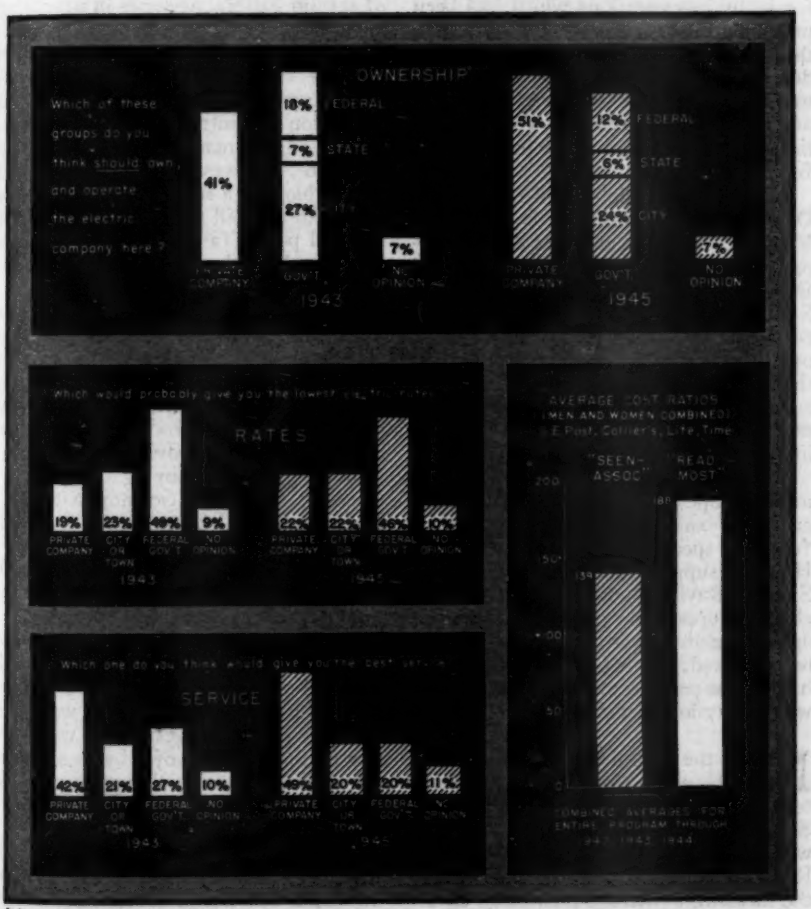
Dividend restrictions are similar to those described for Northern Indiana Public Service. (See page 299.) President Sutton has indicated that the company hopes to "materially increase" common dividends over the 66 cents a share paid in the past three years. Since the 20 per cent requirement should be met by the end of the year, and a large part of the expansion program will be completed, Mr. Hyde concludes that a dividend rate of $1.40 to $1.60 could easily be paid. This would return a yield somewhat less than now obtainable on many other utility issues, but a more liberal policy should be possible in the future, and the current price-earnings ratio is relatively low, while the company operates in a rapidly growing section of the country.

ELECTRIC-GAS HOLDING COMPANY STOCKS

	Where Traded	*8/8/46 Price About*	*Share Earn. 12 Mos.*	*Amt.*	*Price Earn. Ratio*	*Indic. Div. Rate*	*Yield About*
American Gas & Electric	C	46	May	$3.06	15.0	$1.90	4.2%
American Light & Traction	C	26	June	1.66	15.6	1.20	4.6
American Power & Light	S	19	May	4.45	4.3	...	..
American Water Works	S	24	Mar.	1.15	20.9	...	..
Central & So. West Util.	C	13	Dec.	.56(f)	23.3	...	..
Cities Service Co.	C	36	Dec.	3.12	11.5	...	..
Columbia Gas & Electric	S	12	Mar.	1.00	12.0	.20(b)	1.7
Commonwealth & Southern	S	5	June	.44	11.4	...	..
Consol. Elec. & Gas pfd.	O	102	Dec.	11.87	8.6	...	..
Electric Bond and Share	C	23	June	D.36(a)	...	...	..
Electric Power & Light	S	25	Mar.	2.57	9.8	...	..
Engineers Public Service	S	34	June	2.74	12.4	...	..
Federal Light & Traction	S	24	Mar.	1.58	15.2	1.25(b)	5.2
Middle West Corp.	C	26	Dec.	.71(a)	36.7	.50	1.9
National Power & Light	S	12	Dec.	.04(a)	(g)	...	..
Niagara Hudson Power	C	13	June	1.00	13.0	...	..
North American Co.	S	34	June	2.24	15.1	(c)	(c)
Ogden Corp.	C	4	Dec.	.17(a)	23.6	(d)	..
Philadelphia Co.	C	16	Mar.	.78	20.5	.55(b)	3.4
Public Service of N. J.	S	26	Dec.	1.12(e)	23.2	1.00	3.9
Standard Gas & Elec. $7 pfd.	S	137	Mar.	10.20	13.4	...	..
United Corp. pfd.	S	50	Dec.	3.67	13.6	3.00(h)	6.0
United Gas Improvement	S	25	June	1.06	23.7	1.15(b)	4.6
United Light & Railways	C	32	June	3.04	10.5	1.00	3.1

(a) Parent company basis. (b) Payments irregular. (c) Four per cent in Pacific Gas and Electric common stock, worth at recent market price $1.80. On the latter basis the yield is 5.3 per cent. (d) Liquidating dividend of $3 paid in 1945. (e) In six months ended June 30, 1946, $1.51 was earned. (f) Being currently reorganized. (g) Liquidation expected in 1946. (h) Company recently paid $7.50 arrears and the stock may be retired this year.





Edison Electric Institute Bulletin

A CHECK POLL ON ELECTRIC COMPANIES' ADVERTISING

What Others Think

Failure of Lobby Probe Moves Stirs Washington Comment

FEW Washington political observers were surprised when Congress adjourned on August 2nd without having acted upon any of the several demands for lobby investigations which had been presented during the recent session. On the other hand, there had been a great deal of conjecture in these quarters as to the circumstances leading to the failure of the investigation moves, which, at one time or another, appeared to have powerful backing.

Congressman Adolph Sabath, Illinois Democrat, who is dean of the House of Representatives in point of service, introduced the principal legislative proposal for an investigation in that chamber. The Sabath resolution, presented last spring, called for the appointment by the Speaker of a 5-man committee to review the activities of groups allegedly lobbying against housing, price-control, and public power legislation then being considered by Congress.

This proposal received the endorsement of Speaker Sam Rayburn, Democrat of Texas, who made one of his infrequent speeches on the floor of the House to support Representative Sabath. Speaker Rayburn addressed his remarks chiefly to opposition which had developed against public power bills. On this point, he remarked: "This town [Washington] has for the past six months been seething with utility lobbyists."

NONE the less, the Sabath resolution died in the House Rules Committee, despite the fact that Congressman Sabath was chairman of that group. It was reported that other members of the Rules Committee insisted upon amending the measure to include provisions objectionable to the chairman, who thereupon abandoned it. Certain Congressmen, during this period, made no secret of their intentions to demand that any lobby investigation which came to a House vote be broadened in scope to cover the activities of certain Federal agencies in promoting legislation in which they were interested.

Incidentally, the House was considering the controversial Interior Department Appropriations Bill at the time this resolution was introduced. Speaker Rayburn, Congressman Sabath, and a group of Representatives of the so-called liberal House bloc led a successful movement to return to this bill a number of items for Federal power facilities which had been eliminated by the Appropriations Committee.

When this measure reached the Senate floor, after some of the same items had been again cut out in committee, another warm debate developed. During this controversy, Senator James Murray, Democrat of Montana, introduced a resolution which would have provided an investigation of "power lobbying" exclusively. Senator Murray and Senator Lister Hill, Democrat of Alabama, spoke at length in favor of this proposal. Both also were leading proponents of Interior Bill amendments which restored funds for public power expansion.

The Murray resolution was referred to the Military Affairs Committee, which was to have conducted the investigation it called for. No further action was taken on the measure, however, nor was there any further mention of it by its sponsors during the Senate's subsequent proceedings.

ONE possible explanation for the sudden demise of this movement was advanced by Arnold Kruckman, Washington representative of *Western Construction News*, in the July, 1946, issue

of that publication. His article, which was written shortly after the Murray resolution was introduced, predicted its probable failure to achieve passage. He said:

> It is not . . . likely that anything Senator Murray and his followers may do will finally cause the Congress to embark on this witch hunt. The enterprise might be too full of dynamite for the friends of public power and socialization. If there is any investigation of lobbying and lobbyists, it will unquestionably be sweeping, more sweeping than any of the 82 which have gone before; and the weather-wise politicians on the Hill and in the Hollow are acutely conscious that the people want to know about *all* the lobbies, which would naturally embrace those curious people from the Federal government agencies who virtually do nothing from one end of the year to the other except flutter, hover, and ubiquitously gadfly all over Capitol Hill; when Congress adjourns or recesses, they frequently "go in the field," where by more amazing coincidences they apparently follow close on the heels of some members of the Congress who need help, or need attention of another kind.

Mr. Kruckman then speculated as to the horizons which might be opened to a congressional investigating committee which traced the activities of Federal agency employees in the "hinterlands." In California's Central valley, he suggested, there might be some extremely interesting subject for study. He continued:

> There would undoubtedly be an effort to find out if it is true that a consulting engineer may be employed by an agency such as the Department of the Interior, or by a subordinate part of an agency such as the Bureau of Reclamation, to educate the members of Congress to the viewpoint from which stems a policy which might be in conflict with the social, political, and economic point of view of people in an area such as Central valley, Columbia valley, Missouri valley, and other parts of the West. If it is true that such "educators" are maintained by Federal government agencies such as, for instance, the Bureau of Reclamation or the Department of Interior, or the Department of Agriculture, the Rural Electrification Administration, the Office of Price Administration, even the Army and the Navy, the question would logically arise why it is evil for the people, and their business units, to maintain similar "educators." It is no secret in Washington that there are representatives of various Federal government agencies and departments, constantly present in the Capitol who often have desk space, or even office facilities, either in the Capitol building itself or in the House or Senate Office buildings.

Such Federal agency representatives, the writer added, sometimes are designated as "legislative liaison consultants" or "consulting engineers, or economists, or statisticians, or public relations experts." No objection is offered to the services rendered by these "consultants" in giving technical advice to Congressmen "who do not know where to turn for responsible and reliable data and counsel."

At times, however, this advice takes a different turn. Some of the consultants are reported to have demonstrated to Congress, in connection with a particular measure under urgent consideration, what the people "out in the field" may think about debatable legislation.

This is accomplished by inspiring the people "in the field" to loose "a barrage of communications" by telephone, telegraph, or letter, or even by bringing "delegations of homespun voters from critical points to impress upon the members of Congress that the point of view of the government counselor is correct."

The Kruckman article concludes with the thought that if the general public wants an investigation of what activities, if any, along these lines are being financed with the taxpayers' money, it can have such a probe. However, if the public continues apparently uninterested, it cannot blame Congress for failing to institute investigatory proceedings.

Apparently, the lobbying regulation provisions of the new Congressional Reorganization (LaFollette-Monroney) Act will not affect these Federal agency "consultants" described by Mr. Kruckman. This section of the law specifically exempts from its requirements "any public official acting in his official capacity," which seems broad enough to cover the activities of bureau personnel who deal with legislative matters.

There is considerable confusion in other quarters, however, as to the effects of the principal requirements of

this proviso—registration with the clerk of the House and secretary of the Senate of persons who attempt to "influence" legislative action, and accounting for all funds received and spent by such persons. Various associations with representatives in Washington are taking the view that this may not require the registration of an association formed chiefly for purposes other than the "influencing" of legislation. They feel, rather, that it likely will necessitate the registration of their staff members, if any, who engage in actual liaison work at the Capitol.

This interpretation is based both upon the rather vague language of the lobbying provisions and upon an interpretation rendered by one of the authors of the bill, Senator LaFollette, Republican of Wisconsin, on June 6th on the floor of the Senate. At that time Senator LaFollette said: "It [the registration proviso] does not apply to organizations formed for other purposes whose efforts to influence legislation are merely incidental to the purposes for which they were formed."

As a result, major trade associations, the larger labor unions, and other groups operating in Washington are planning tentatively to register only their "contact men," or those representatives who actually follow the progress of legislation in which they are interested and deal with Congressmen in regard to same.

—W.B.W.

Management's Right to Manage

CERTAIN important responsibilities which face management under the American system of enterprise were set forth by Gwilym A. Price, president of Westinghouse Electric Corporation, at a luncheon gathering at the Park Lane hotel, on July 17th, in New York city.

In addressing the seventy editors of technical publications who were present as guests of the corporation, Mr. Price made these pertinent observations as to what his company considers to be management's paramount responsibilities:

> First of all, we have very definite responsibilities to our stockholders. They are the backbone of private enterprise and provide the funds upon which all productive enterprise is based. Without these funds, invested at a definite risk, there could be no factories, tools, products, or employment. In a very real sense, we are leasing from them all the varied means of production. . . . Secondly, we have equally binding responsibilities to our employees. How well a business is run, how much it produces, and how well it pays are in the last analysis dependent on the skill and diligence of its employees. . . . Workers, too, are investors with a very real equity of hard work and creative endeavor in the company they work for. We feel that to them management owes the promise of maximum job security through continuity of work, the opportunity of advancement and higher wages, and the sense of belonging to a productive and growing enterprise. . . .
>
> The sense of belonging, I feel, is also very important, even though it may be difficult to achieve in industries where huge numbers of employees are involved. But it is management's job to make the employee feel that he is a necessary part of the entire enterprise, not just "the hand that turns a wrench." This can be achieved only by a much closer relationship between management and workers, and by a complete disappearance of the so-called "class conflict."
>
> Finally, management owes allegiance to the public, to those who buy and use the products of industry. That obligation is simply to manufacture the best possible product at the lowest possible cost. But, in a larger sense, it is the responsibility of a guardianship. For the people of America have entrusted industrial management with the tremendous task of providing them with all the necessities, comforts, and conveniences of a high standard of living. If we fail, then we endanger the whole system of free enterprise on which the prosperity and greatness of the nation are based.

THE Westinghouse president then declared that to meet fairly and squarely these obligations of management to those who buy, make, or finance the company's products, it is necessary that management have free exercise of certain rights. This, he said, was the real essence of their stand during the recent strike. Among the specific points he made were these:

WHAT OTHERS THINK

"OH, GENTLEMEN, ISN'T THIS MARVELOUS? IT WAS ON MY FINGER ALL THE TIME"

We feel very strongly that management must have the exclusive right to establish the methods of manufacture, the equipment to be used and processes to be followed, and to administer all incentive systems. How else could we meet our responsibilities to stockholders, employees, and the public, if control of the techniques of production did not rest in our hands? . . .

Our obligations to stockholders demand that we have certain rights with regard to use of their funds. Management alone should reserve the right to decide how these funds can best be apportioned. During the strike we were criticized for the amount of money we placed in our reserve fund. Why, we were asked, couldn't some of this money be distributed to employees in the form of increased wages. Our answer was and is that our obligations to all concerned required that we lay aside sufficient funds for future growth, for possible emergencies, and for research and development on new products that in turn lead to more jobs. This right enables us to meet our responsibilities not only to stockholders, but to employees as well, by guarding against slimmer days and thus helping insure continuity of work.

Our obligations to employees also require the exercise of certain rights. Should a supervisory employee, promoted from the bargaining unit, be penalized for that fact? We feel not, and insist that it is the right of management to see that he is not. Should any employee be forced to belong to the union, or be discriminated against because he wants to withdraw from the union? We feel not, and insist that it is the right of management to guarantee such an employee freedom of choice.

As I said before, a firm definition of these rights was the most significant thing to come out of the strike. I hope you will agree that these are not peremptory or dictatorial

powers. They are simply the necessary complement of our obligations. We cannot meet our responsibilities unless we first have free and untrammeled control of our rights.

As to concrete gains which came out of the strike, Mr. Price mentioned the establishment of management's responsibility to administer an incentive system, and certain points dealing with union procedure. The company's attitude toward its employees, he said, is based on the following principles:

1. A right to employment regardless of affiliation with any religious, fraternal, labor, political, or social organization.

2. Recognition of the right of the employee to determine the form of representation he considers advisable.

3. A desire and interest on the part of management for the opportunity to discuss subjects of collective bargaining with authorized employee representatives.

In a large-scale industry it is next to impossible, we recognize, for the individual employee to make himself heard effectively. What is needed is a bargaining unit—a collective spokesman—which can express the united wishes of the great mass of workers and press for their fulfillment. This task the unions have helped perform.

Unions can also serve in other useful ways. For example, unions make it necessary for management's policies to be more stable and more adequately defined, and also more consistent throughout the plants located in different cities. If the labor organization is mindful of its responsibilities it can be helpful in solving minor grievances in their early stages and prevent their becoming major problems.

But while we recognize the benefits that unions have won for their membership, we also feel that they have certain shortcomings that offer a real danger to their future effectiveness. Unions represent large masses of people, with power invested in an elected few. For that reason it is vital, we think, that unions must be genuinely democratic institutions led by wise leaders.

To illustrate the failure of unions at times to meet democratic standards, the speaker then cited an incident which happened at the Westinghouse East Pittsburgh plant:

. . . At a meeting for the election of union committee chairmen, according to a newspaper report, only 275 out of a total of 17,000 voting members were present to cast ballots. By contrast, at the last presidential election the American people were chided because a mere 50 per cent had gone to the polls. But here is a case in which 1½ per cent of the union membership voted at an important election. That, we believe, is a dangerous tendency and bodes ill for the future of unions.

However seriously we are concerned with such trends, there is nothing that management can do in this situation, because of the stringent restriction of the Wagner Act. It is up to the unions themselves to make their organizations working examples of democracy and wise leadership. For our part we would welcome such a move and encourage it to the best of our ability and to the limits set by law.

In closing, Mr. Price observed that while the strike imposed severe hardships on the company, its customers, and its employees, the management was firmly convinced that only by sticking to its convictions could it ensure the continued successful progress of the company. He expressed the belief that the complex relationship between management, the union, and employees has been clarified to the benefit of all, and that the gains more than justify the long and bitter struggle that was necessary to achieve them.

The impression remained, when the Westinghouse president had finished his remarks, that in his forthright statements were outlined principles upon which American industry, with management and employees working together, can function under the free enterprise system for the benefit of all concerned.

"Who Gets the Consumer's Dollar?"

Under this heading, the leading article in the July 31st *Guaranty Survey*, published by Guaranty Trust Company of New York, casts much needed light upon this question, regarding which there are radically mistaken notions. The article states:

A popular poll reported recently in the press indicates that, in nearly three cases out of four, the "man on the street" who has an

opinion on the subject believes that "capital" receives a larger share of the products of industry than labor—that, after all other costs are paid, "capital" gets more than half of what is left, and labor less than half.

Any such belief is so grossly at variance with readily available facts that it would seem almost superfluous to refute it. Yet, as long as such beliefs are widely held, they are the foundation on which the political, social, and economic actions of the people are based; and, unless they are dispelled, the affairs of a democracy can hardly be expected to proceed on a reasonably intelligent basis. The effects of industrial unrest are tragic enough in any case, but they are doubly tragic if they arise from such profound misconceptions as this.

The author observes that "businessmen are often blamed for not placing economic facts more clearly and forcefully before the people; and, since their own interests are directly involved, a share of the responsibility for such 'education' would seem to be theirs." Then, after commenting that the apparently prevalent idea that capital rather than labor receives the major share may be due to careless or biased reading of available data, the article refers to figures compiled by the National Industrial Conference Board.

THESE figures, based in part on census data, but with duplications eliminated, salaries included with wages, and value added by manufacture broken into its constituent elements of cost and profit, it is stated, present a truer picture of the actual costs and profits in manufacturing. The resulting figures indicate, the article goes on to say, that

> . . . in 1939 more than 64 cents of the consumer's dollar went to pay for materials, fuel, purchased energy, depreciation and depletion, taxes, and miscellaneous expenses, exclusive of interest and labor costs; nearly 31 cents went to pay wages and salaries; and less than 5 cents remained for interest, dividends, and profits for reinvestment in business operation. The return to "capital," instead of exceeding the return to labor, amounted to less than one-sixth of the return to labor. (Interest, which is an item of cost from the standpoint of the business enterprise, is included here with profits because it is a return to "capital" in the commonly accepted sense.) If it be objected that the salaries of central administrative personnel are not truly a part of the return to labor, such salaries can be shifted from the labor category to the general-cost category. This shift has little effect on the picture; the return to labor is still more than six times the return to capital.

Commenting that similar comparisons may be made for some of the companies involved in the recent strike wave, the article mentions General Motors, seven leading steel companies, the electrical equipment companies, and two meat packing companies as illustrations. It then proceeds to mention that these comparisons deal exclusively with the private sector of the economy:

> . . . If the activities of governmental bodies are included, the relative share received by labor continues to show a heavy preponderance.
>
> The estimates of national income show the total compensation of employees, including salaries and wages, work-relief wages, Social Security contributions of employers, and other labor income, which consists of employers' contributions to pension funds under private plans and under systems for government employees, compensation for industrial injuries, etc. Income to "capital," that is, to others than employees, includes net income of incorporated business (dividends plus corporate savings), net income of proprietors, interest payments and accruals, and net rents and royalties.
>
> During the period from 1929 to 1945, inclusive, the share of total national income received by employees ranged from a low of 64 per cent in 1929 to a high of 79 per cent in 1932, with an average of 70 per cent for the entire period. The share received by capital, as defined above, ranged from 21 to 36 per cent, with an average of 30 per cent. The distribution in 1945 was 71 per cent to employees and 29 per cent to owners and investors, or nearly 2½ to 1. These figures, like those cited previously, overstate the return to "capital" because of the inclusion of the total amount of proprietors' earnings in the capital category.

CALLING attention to the need for wider information, the author closes his informative article with this pertinent observation:

> The comparisons shown above are of interest primarily as an indication of the shocking misconceptions regarding elementary facts that appear to underlie much of the current economic and political unrest. If the nation is to recover from the effects of war with a minimum of further industrial prostration, there is an urgent need for more effective means of bringing such facts to the

attention of those who work and those who vote.

It becomes increasingly apparent from the statements of business leaders, editorials in the metropolitan press, and the comments in publications touching upon the general economic scene, that there is growing recognition of the need of education along intelligent lines to aid the American people to know the facts in these economic matters.

—R.S.C.

Outlook for Natural Gas in Competition With Other Fuels

In a paper on "The Economic Future of the Natural Gas Industry," read before the convention of the Arkansas Utilities Association at Hot Springs recently, Colonel Willard F. Rockwell, president of Rockwell Manufacturing Company of Pittsburgh, made some interesting comments upon industrial and economic developments in this country and their bearing upon the natural gas industry.

Colonel Rockwell stated that the deflationary forces which have prevented the inflation (which followed every war since 1860) from lowering our standard of living have "come from low-cost transportation, the use of electrical energy, mass production methods, and chemical developments." Continuing, he said:

> When the white man came to the eastern shores of this country, there were no beasts of burden, except the human body, and the white man brought the four-legged carriers and the wheeled vehicles. From 1860 to 1880, the civil engineer planned and built the railroads and canals which cut transportation costs. From 1880 to 1900, the electrical engineer developed a method of transmitting power to homes and factories from one great economical and efficient central station. From 1900 to 1920, the mechanical engineer developed labor-saving machinery and mass production methods. From 1920 to the present time, chemical engineering made the greatest contributions, with new types of raw materials and reduction of processing costs.

It was the speaker's opinion that, when considering the competitive position of all available fuels, the "natural gas industry has less to fear and more in its favor because it is less affected by labor costs for many obvious reasons." He stated:

> The higher cost of coal increases the cost of transportation, which in turn increases the cost of coal at the point where it is consumed. Coal in its native state requires a large amount of labor for its production, transportation, and distribution, so that coal, as a fuel, or a source of power, rises rapidly in cost where labor costs rise either from higher hourly wages or from restricted output, or both. It likewise affects electrical energy which is derived from coal. Fuel oil is less affected by higher labor costs than coal. Natural gas is least affected by rising labor costs, because it can be transported through pipe lines and, because it is compressible, it is fuel and energy provided in many cases with the most adaptable features for cheap and instantaneous conversion.
>
> The economic future of the natural gas industry in this country has had the benefit of all the great engineering advances and natural gas itself will eventually be one of the greatest sources of raw materials, because it is capable of being converted into synthetic foods, drugs, drinks, clothing, housing, and almost anything in the way of material needs of the human race. All we need is to drill a hole and set the tubing and the natural gas rushes forth with sufficient pressure to provide its own transportation over a considerable distance, and its possible uses are beyond the limits of our imagination.

In closing, Colonel Rockwell observed that the "greatest threat to the future of the natural gas industry is government control."

He added:

> If we can confine exploration, ownership, development, and use of natural gas to free enterprise, and eliminate government favoritism and folly so that we can have both free and honest enterprise, the future of natural gas is assured because it can be the most important contribution to the welfare of our people. We can be very grateful that this country has been especially favored with the largest potential supply in the world, even though we have wasted it for many years. Its economic future is as certain as anything

"AND BE CAREFUL HOW YOU DRIVE. DON'T GO SMACKING INTO THINGS AND SCRATCH UP THAT BRAND NEW PAINT JOB"

can be which is subject to the frailties and follies of mankind.

THE reference to the "threat of government control" is a reminder of the extended investigations of the natural gas industry by the Federal Power Commission, during past months, and the many questions which have arisen at the various hearings, as to what the future holds for that business, especially in regard to Federal *versus* state regulation. The final hearing, held by FPC in Washington, D. C., in June, may provide some of the answers.

Employees Need to Be Told Facts About Our Economic System

THE many strikes in practically all types of manufacturing industry during recent months have flared up also among the public utilities. These latter have affected communities where service is rendered by business-managed companies and by the municipalities themselves.

That industrial management is aware of the menace in this situation to the functioning of our economic system, is indicated by the attention given to it at recent national gatherings of businessmen.

At the meeting of the National Industrial Advertisers Association in Atlantic City, in June, Chester W. Ruth, director of advertising for Republic Steel Corporation, in his address on "Industry's Missing Ingredient" declared that "the biggest immediate problem that confronts the managers of American industry today is to enlist the loyal and wholehearted coöperation of its workers. The lack of such coöperation is industry's missing ingredient."

As background for that statement, Mr. Ruth quoted the words of industrial leaders and various press items, saying, "you have only to read the newspapers and your own favorite business magazines to realize that management's biggest problem today is that of dealing with the people on its payrolls." He then commented:

> Is it not an astounding fact that in a nation which has achieved for its workers the highest standards of living in the world we are now confronted with three grim and heavily fortified road blocks on our way back to peace-time progress and prosperity?
>
> (1) Large groups of these workers neither have understanding of nor confidence in our American economic system.
>
> (2) Millions of these workers themselves have actually become the source of a large share of antimanagement public opinion daily expressed in excessive union activity and biased government regulation.
>
> (3) The majority of these workers consequently see no reason why they should give their best efforts to management in return for their wage dollars.

MANAGEMENT and labor, the speaker said, are no longer traveling the same road together. They are working at cross-purposes. He added:

> We shall have to admit frankly that management itself is largely to blame for these conditions. . . .
>
> Management has blundered in failing to recognize the full importance of good employee relations. It has done a good job with its stockholders and its customers. It has given these two groups complete information about its organization, its equipment, its services, its products, and its markets. But, ironically enough, it has neglected the third group, equally vital to industry's successful operation—its own employees.

To overcome the lack of intelligent and full measure coöperation of its workers presents to industry a job which becomes a matter of human engineering, Mr. Ruth said. Referring to a booklet, "More for Your Wage Dollar," by Robert M. Creaghead, of Robert F. Stone & Company, Cleveland, he stated the author's belief that the "one answer to the problem lies in internal merchandising." He presented the list below, prepared by Mr. Creaghead to show how the principal functions of industrial marketing have their counterparts in internal merchandising.

Mr. Ruth declared that internal merchandising means no more and no less than using the same skills, methods, and techniques which are employed in telling and selling customers and prospects "to tell and sell our own employees." To do this, however, mental concepts and atti-

Industrial Marketing	*Internal Merchandising*
Market research	Employee attitude and opinion studies
Product design	Organization structure
Sales policy	Organization policy
Distribution	Supervision
Catalog	Foreman's manual
Magazine advertising	Employee publication
Customer booklet	Employee manual
Direct mail	Letters to employees
Billboard	Posters and bulletin boards
Radio	Public address system and local radio
Dealer training	Foreman training
Advertising manager	Industrial relations director
Advertising agent	Internal public relations counselor

tudes will require readjusting. He further added:

> . . . We must consider the workers in our plants and offices in the same light as we consider our customers. We must regard them not only as buyers but as citizens of their community and nation. We must study them as individuals and as groups whose loyalty, friendship, and coöperation we must win. We must win them because the future success of our companies and the preservation of our enterprise system depend upon it.

While these remarks were addressed to advertising men representing industrial interests, the principal theme of the speaker—the threat to our economic system through the lack of a clear understanding of it by the mass of employees—should be of interest to all those in utility managements who have intimately to do with personnel relations.

—R.S.C.

Cities Eye Utility Taxes

THE recent action of the Ohio Supreme Court in voiding an attempt by two cities of that state to move in on the rich preserve of utility tax revenues may be only a starter. True, the Ohio ruling knocked out the attempted local tax levies on gas, electric, and telephone bills as far as that state is concerned. But it does not affect, of course, similar moves elsewhere unless the courts and legislatures of other states accept the sound tax principle upon which the Ohio decision was based.

This Ohio ruling was to the effect that where the state has itself entered the field of special taxation with respect to utility operations, then that field should be regarded as preëmpted for state taxation and, accordingly, immune from local taxation. Otherwise, utilities and their customers could well be burdened with layer upon layer of special taxes—Federal, state, county, city, school district, or whatnot.

Threatening directly and indirectly to increase the tax burden of telephone, telegraph, and other public utility companies, cities both large and small throughout the country are still searching for new nonproperty tax revenues, analysis of current developments in the municipal finance field discloses, according to recent disclosures of the Municipal Finance Officers Association.

PRESSURE for increased municipal expenditures for payrolls, public works, and generally expanded postwar facilities and services is giving unprecedented impetus to the trend of recent years toward the adoption of new municipal taxes and increased municipal sharing in the receipts of state-collected taxes. Public utility taxes have been prominently involved in such steps already taken, as well as in current proposals.

The Rhode Island legislature considered, but did not approve, earlier this year a bill calling for repeal of the local tax exemption heretofore granted in that state to telephone, cable, and telegraph companies. Likewise, the Missouri legislature considered, without approval, a bill proposing authorization of a 5 per cent consumer tax on gas, electric, and telephone utilities in the Kansas City school districts.

Proposed but subsequently dropped this year by New York city's Mayor William O'Dwyer was a local 5 per cent tax on utility bills, which would have been borne by those paying directly for the use of gas, electric, steam, telephone, and telegraph facilities. Other cities, including Jacksonville, Florida, and Minneapolis are currently contemplating obtaining more local revenues from utilities.

Taxes on privately owned utilities, including telephone companies, are one of the most lucrative sources of nonproperty tax revenues for cities at present. Increased utility taxes have been levied in recent years by a number of cities, including, Memphis, Tennessee; Charleston, South Carolina; Pasadena, California; West Palm Beach, Florida; Kansas City, Missouri; Wichita Falls, Texas; El Paso, Texas and Wichita, Kansas.

BESIDES direct utility levies, utility firms also are faced with the threat of having to share in the payment of a growing number of new local general taxes. That this trend can seriously affect the over-all level of taxes in the states was indicated when New York state's legislature this year enacted reductions of $122,000,000 in state levies but authorized New York city to impose new local taxes with an anticipated yield of $69,000,000. The state tax cuts would have been more than offset had the legislature approved an originally proposed $142,000,000 New York city tax program. Among other things, New York city was authorized to raise its local sales tax from 1 to 2 per cent, and double its gross business and similar taxes. The abandoned proposals included a wage tax, as well as the public utility tax suggestion.

Toledo took one of the most significant steps in the municipal revenue field this year with the adoption of a one per cent municipal income tax, estimated to yield between $3,000,000 and $4,000,000 a year. Inaugurated March 1st, the tax is levied on wages, salaries, and commissions of all residents and nonresidents earned in Toledo; net profits of all Toledo businesses and professions, or those conducted by non-residents in Toledo; and on that part of the net profits of corporations earned in Toledo. The tax on wages and salaries is deductible by employers from pay checks of employees, while those not classified as employees will pay quarterly declarations of estimated tax.

Although Philadelphia is the only other city in which such a tax is currently effective, the revenue potentialities of municipal income taxes are being considered by many other municipalities. Among the cities where such levy has been suggested this year are New York, Boston, St. Louis, Minneapolis, and Milwaukee, with similar proposals having been raised earlier in numerous others, including Dallas, Providence, Kansas City, and Detroit.

PRIOR to enacting its municipal income levy, Philadelphia abandoned a short-lived local sales tax. Adopted in 1938, the sales tax, levied at the rate of 2 per cent, brought in only $6,793,614 during its 11-month existence. Merchants said it cost 11,000 retail clerks their jobs, and blamed it for causing a drop of $53,200,000 in retail sales.

Put into effect in 1940 at a rate of 1¼ per cent, the Philadelphia income tax yielded $16,195,139 that year, $18,377,901 in 1941, and $24,762,041 in 1942. With the rate reduced to 1 per cent in 1943, it produced $20,761,884; $22,315,116 in 1944; and $22,430,458 last year. The tax is levied on salaries and wages and net profits of unincorporated businesses and professions. Corporate profits are exempt because the measure rests on a state law granting the city the right to tax only objects not taxed by the state. Pennsylvania has a corporation income tax law, but does not tax other incomes.

Besides New York city, municipal general sales taxes also are currently effective in New Orleans, Atlantic City, San Bernardino, and Santa Barbara, California, and Charleston and Huntington, West Virginia. Various types of selective sales taxes, business license taxes, and other new local levies also are producing sizable amounts of municipal revenues.

Pressure for increased municipal sharing in the receipts of state-collected taxes also is increasing. The effect of this tax sharing is to either increase the state tax level or keep it higher than would otherwise be necessary. While only a few states share utility taxes with their municipal subdivisions, utility companies share the burden of other general taxes affected by the trend.

INCREASED state aid to local governments has spread rapidly in recent years. An indication of what may come is offered by the fact that last year 10 states increased municipal sharing of state-collected taxes, while 4 states extended new or additional direct aid to localities. Besides being pressured for a broadening of such aid, state legislatures may be asked in some instances to stabilize the assistance as was done this year

in New York state. The program enacted in New York state is designed to provide municipalities with definite amounts of financial assistance, rather than fluctuating receipts. Main bill in the program pools revenue from shared taxes and provides for distribution to municipalities on a per capita basis. Other bills created two "rainy-day" stabilization funds, into which excess revenues from shared taxes will pour in good times, to be drawn upon in low-income periods.

While the bulk of the nation's municipalities still rely predominantly on the local property tax, there already are significant exceptions. The Municipal Finance Officers Association reports, for example, that Milwaukee receives only about 30 per cent of its revenues from property taxes which have been relieved by state distributed income taxes. Property taxes account for only 23 per cent of Birmingham's total revenues, with licenses and permits contributing 47 per cent. A locally levied and collected sales tax gives New Orleans about 47 per cent of its revenues.

Proposals for broadened local taxing authority and for greater municipal sharing in state taxes appear likely to be one of the major issues during 1947 when virtually all of the state legislatures will convene in regular session.

—BETHUNE JONES.

Freedom of Employment

"THERE *is one basic law that must be placed on the statute books before our nation can ever hope to put an end to the strife between employers and employees. Pass a Federal act which will guarantee to every person in the United States the right to work wherever he pleases, at whatever wage he can agree upon with his employer, without having to pay tribute to anyone. Such a law would have the effect of eliminating both corrupt politics and irresponsible union leadership from the field of enterprise. These forces are accountable for nine-tenths of all the trouble laboring people have with their employers. Until this unholy combination is broken up and destroyed there can be no hope for peaceful relations between labor and management. This would not affect any fair and equitable principle of collective bargaining. It would, however, put unions on their own merits. This would, in the long run, create a much higher type of unionism and provide a finer service to the working people. The passage of such an act would be nothing more than a reaffirmation of one of the basic principles of the Constitution of the United States.*"

—FREDERICK C. SMITH,
U. S. Representative from Ohio.

The March of Events

In General

Thomas W. Martin Award Resumed

THE prize awards committee of the Edison Electric Institute recently announced the resumption of the Thomas W. Martin Rural Electrification Award, which was suspended during the war years.

Offered annually again by Thomas W. Martin, president of the Alabama Power Company, to the electric operating company which makes the greatest contribution to the progress of rural electrification and agricultural advancement, the award, since its establishment in 1932, has been a coveted token of distinction in the rural electrification field. In that year, 1932, electricity was serving approximately a half-million farms, and rural electrification was just emerging from the necessary pioneering stage, instituted and carefully developed by the business-managed electric companies. In the intervening fourteen years, electrified farm homes have passed the 3,000,000 mark, nearly 2,000,000 of them being served by the privately operated utilities.

Veto on Tidelands Sustained

THE House of Representatives early this month sustained President Truman's veto of the Tidelands Oil Bill, failing by 17 votes to obtain the necessary two-thirds majority to override it. The vote was 139 to 95.

Thirty-six Democrats joined 103 Republicans in voting to override. Eighty-six Democrats, seven Republicans, and two minor party members voted in the negative.

The bill was originally passed by the House by a vote of 108.

Mr. Truman had returned the bill to Congress with the declaration that the United States Supreme Court, and not Congress, should decide the issues involved.

The measure, by renouncing all Federal claims, would have given the states clear title to off-shore lands, often rich in oil, between the low-water mark and the 3-mile limit. The Supreme Court now has a case before it for determination of this question.

The bill, in addition, would have given the states clear title to lands beneath international and navigable waters within their boundaries.

SEC Gets Proposal

A JOINT petition filed recently with the Securities and Exchange Commission by General Public Utilities Corporation and its subsidiary, NY PA NJ Utilities Company, proposed dissolution of NY PA NJ to simplify corporate structure of the parent company system.

NY PA NJ would transfer all its assets and liabilities to General Public Utilities in exchange for all outstanding NY PA NJ stock.

NY PA NJ also proposed to pay a dividend on its common stock equal to the balance remaining in its earned surplus account immediately before dissolution is effected.

The assets to be acquired by General Public Utilities include: 2,250 shares of capital stock, a 20-year 6 per cent note for $20,000 due 1951, and $62,221 open account of the Spring Brook Water Company, and the following blocks of common capital stock:

New York State Electric & Gas Corporation, 46,484 shares; Rochester Gas & Electric Corporation, 775,914 shares; Canadea Power Corporation, 40,000 shares; Staten Island Edison Corporation, 260,000 shares; Jersey Central Power & Light Corporation, 1,053,761 shares; Metropolitan Edison Company, 360,780 shares; Northern Pennsylvania Power Company, 22,130 shares; New Jersey Light & Power Company, 87,500 shares; and Atlantic Utilities Service Corporation, 300 shares, in addition to 17,744 $4.40 dividend series preferred shares of New England Gas & Electric Association.

Hearing Set on Rate Schedules

THE Federal Power Commission on August 6th made public an order setting a hearing for September 16th on terms and conditions of service embodied in the revised rate schedules filed by Panhandle Eastern Pipe Line Company on October 22, 1945. Hearing will be held at Washington, D. C.

The commission has received complaints from customers of Panhandle regarding interruptions of service, and has set the hearing in order to secure evidence on all matters relating to the reasonableness and adequacy of the terms and conditions of service included in the

rate schedules and on proposed changes or additions to existing practices relating to such service. By order of November 2, 1945, the revised rate schedules were accepted by the commission. This order, however, stipulated that the record remain open for such further proceedings as the commission may deem necessary or desirable to effectuate the purposes of the Natural Gas Act.

The recent order provided that Panhandle shall, by September 6, 1946, serve upon its customers, as well as state regulatory commissions in the states through which it operates, and file with the FPC copies of any changes which it deems desirable, and shall at the same time file in the same manner proposed rules and regulations to govern curtailment and interruption of service.

Changes in existing terms and conditions of service deemed desirable and recommended as well as proposed rules and regulations relating to curtailment or interruption of gas service recommended by any interested parties shall also be filed with the commission and served on Panhandle by September 6th. All parties may submit responses to the proposals and recommendations of any other parties prior to or at the opening session of the hearing on September 16th.

FPC Denies Gas Export

THE Federal Power Commission on August 6th made public an order denying petitions for dismissal of its order of June 6th permitting Reynosa Pipe Line Company to export natural gas to Gas Industrial de Monterrey, S. A., a Mexican corporation. The petitions were filed by two interveners in the proceedings, Compania Mexicana de Gas, S. A., and the railroad commission of Texas. In addition to the motion for dismissal of the order, the first petitioner requested rehearing, further hearing, reconsideration, and modification of the order, and the latter requested rehearing, modification, and stay of the order. The order included denial of these requests.

The commission's order of June 6th, filed in conjunction with Opinion No. 135, granted export authority contingent upon Reynosa's filing of an application for a certificate of public convenience and necessity for construction of approximately 30 miles of pipe line from the Hidalgo county, Texas, gas fields to the Mexican border. Such application has been filed by Reynosa.

Under a 10-year contract, Gas Industrial de Monterrey is to purchase gas from Reynosa at the border and pipe it to Monterrey for use by a limited number of industrial consumers who are subscribers to Gas Industrial's stock. The commission's order limited the gas exports to 50,000 MCF daily of gas produced in LaBlanca, North Weslaco, and South Weslaco fields in Hidalgo county, Texas, from reserves owned by LaGloria Corporation, parent company of Reynosa. It is stipulated in the order that Reynosa and LaGloria must at all times give preferential service to persons and municipalities in the United States.

Court Upholds FPC Order

AN order reducing the wholesale rates on natural gas produced in Louisiana was recently upheld in New Orleans by the United States Fifth Circuit Court of Appeals. The court denied a petition of the Interstate Natural Gas Company, Inc., to "review and set aside" a Federal Power Commission order filed April 27, 1945. The FPC order declared prices charged by the Interstate Company to Southern Natural Gas Company, Memphis Natural Gas Company, and the Mississippi River Fuel Corporation were "unjust and unreasonable." It set 4.66 cents per cubic foot as the maximum rate. Records in the case say Interstate is a producer of natural gas, with wells in the Monroe field, and also purchases gas from other producers for sale to pipe-line companies.

The Interstate petition claimed the FPC, which has jurisdiction only in matters pertaining to interstate commerce, had no authority to regulate the rates in question. Its sales are completed within the borders of Louisiana, the company contended, and the purchaser pipes the gas to other states.

The opinion of the court, written by Circuit Judge Joseph C. Hutcheson, declared the sale an essential factor in an interstate transaction. Judge Curtis L. Waller wrote a dissenting opinion. Interveners in the case on the side of the FPC were the Louisiana Public Service Commission and the cities of New Orleans and Baton Rouge, in which rates were affected by the order.

Seek Cash Distribution

THE Boyce committee for holders of Central States Electric Corporation 5 and 5½ per cent debentures has filed a petition with the United States District Court at Richmond asking that the trustees be directed to make a cash distribution of $1,803,700, or 10 per cent of the $18,037,000 principal amount of the two series.

The petitioners reserved the right to adjust the application in court to have the distribution apply to principal and accumulated interest.

The court set August 27th as the final date for interested parties to respond to the committee's petition. A hearing on the petition will be scheduled later, probably in September.

Would Alter Program

DONALD R. RICHBERG, counsel for American Light & Traction Company, and its parent, United Light & Railways Company, told the Securities and Exchange Commission on August 6th, during oral argument, that Light & Traction was agreeable to amending its plan of liquidation and dissolution to provide for an escrow fund to take care of whatever additional

sum of money which the commission and the courts may determine should be paid the company's preferred stockholders.

The company's plan insists upon carrying out the charter provisions covering the preferred stock, which calls for paying off the preferred stock at par ($25 a share), plus accrued dividends in the event of liquidation or dissolution, whether voluntary or involuntary.

The commission disapproved in its findings and opinion dated May 7, 1946, by a 3-to-2 division, this price and held that $35 a share "represents a fair approximation of the investment value of the American Light & Traction preferred."

The proceedings before the commission on August 6th were in the nature of a reargument because of the resignations of Commissioner Sumner T. Pike and Chairman Ganson Purcell, who with Commissioner Robert K. McConnaughey formed the majority of the commission at the time the May 7th findings were issued.

Atomic Electric Generating Plants Expected

THAT atomic energy may be slightly less expensive in the production of electrical power than the use of present-day, coal-fired plants was revealed in a report prepared for their company by the Westinghouse Electric Corporation scientists, Dr. J. A. Hutcheson, associate director of the research laboratories, and C. F. Wagner, manager of the central station engineering department.

This survey was reported to indicate that the possible application of atomic energy to the production of electric power is sufficiently feasible to warrant a careful and thorough investigation. From what can be seen now, it appears that technical problems, rather than economic problems, are the ones which must be solved before the atomic power plant of the future is practical, it was said.

An assumption was made in the report that an atomic powered 100,000-kilowatt plant would be built, in which the cost of the equipment and plant necessary to provide steam for the turbines would be about $12,000,000. This would be roughly four times the cost of the steam end of an equivalent power plant using coal as a fuel.

Calculations were made comparing the cost of power obtained from this atomic power plant with that obtained from a coal power plant. These included amortization of the investment in each case at the rate of 15 per cent per year. It was further assumed that the atomic fuel would be refined natural uranium such as was used in the "piles" at Hanford and Oak Ridge (atomic bomb manufacturing sites). Assuming that this material costs $20 a pound, the total cost of the generation of electric power in the atomic power plant appears to be slightly less than is the case in the coal-fired plant, assuming that coal costs $5 a ton.

At present there is continuous production of large quantities of controlled atomic power in the form of heat at both Hanford and Oak Ridge, but it is a by-product and is carried away in one plant by air and in the other by a stream of water. By inference it seems reasonable that this power must amount to many thousands of kilowatts. Therefore, it seems logical to suspect that the earliest applications of atomic power will be similar to the present scheme of obtaining power from coal, in that steam probably will be used to drive the turbine and that the heat liberated in connection with the fission of some material will be used to form the steam.

Seeks Guidance on Lobby Law

A LOOSELY written law, complicated by a typographical error which slipped past President Truman when he signed it, has thrown lobbies in Congress into wild confusion and has added much to the headaches of those charged with administering the new statute.

The law at issue is the Regulation of Lobbying Act, approved by the President on August 2nd as a part of the congressional reorganization bill. Its enactment represented the first successful effort, after attempts reaching back many years, to put the lobbies which harass and sometimes confuse Congress, and their behind-the-scenes activities, on the open record.

Principal provisions of the act call for the registration of lobbyists and lobbies and for periodic detailed reporting on who finances them and how the money is disbursed.

South Trimble, clerk of the House of Representatives, with whom the lobbies must register and to whom they must report on financing and actions, has appealed to Tom C. Clark, Attorney General, for guidance. The Department of Justice has assigned an assistant solicitor general to study the statute. Mr. Trimble conferred with Mr. Clark on August 9th, seeking a detailed interpretation and outlining of the scope of the act.

Arkansas

Referendum First Step

A TEST suit to determine whether the city of Little Rock can issue revenue bonds to finance proposed purchase of the Arkansas-Louisiana Gas Company distribution lines for municipal operation will not be filed unless the people endorse the proposal at the polls, Mayor Sprick said recently.

"If the people do not vote to purchase the

system there would be no point in going into the courts to decide how far the statutes go," he said.

A public hearing was scheduled before the city council on August 12th. The mayor said this would give citizens an opportunity to express their opinions before aldermen vote on a special election.

In reply to the chamber of commerce suggestion that an impartial board be appointed to prepare evidence to submit to the voters before the election, Mayor Sprick said he supposed the administration would present its case and the company would present its argument.

The city plans to engage engineers to spot-check the gas distribution system and appraise its value. This investigation will require until about January 1st, after which the city will make an offer to the company.

If the company declines the offer, the city could invoke a state law authorizing it to ask the state commission to set a fair price.

Dam Contract Awarded

THE White River Constructors of Houston, Texas, has been awarded the contract to build Bull Shoals dam, key project in the proposed comprehensive development plan for the White river basin, Colonel Gerald E. Galloway, Little Rock district engineer, said recently. The Texas firm, a combine of seven companies, entered a bid of $24,263,935 to construct the fifth largest concrete dam in the nation.

Work will start within thirty days, and the entire job must be completed within 1,150 days.

Refund Ordered

A $1,000,000 refund to nearly all of Arkansas Power & Light Company's 120,000 customers was ordered by the state public service commission on August 9th. The rebate will be based on business in the calendar year 1945 and will apply to persons who have received continuous service from July 1, 1945, to July 1, 1946. The only exception will be consumers in the area of Warren, Bradley county, who will be eligible if they received service from July 16, 1945, to the latter date.

The refund will be paid through credits on monthly bills in October and will be a savings of approximately one month's billing. Residential consumers will receive approximately $318,000 of the refund; commercial consumers $288,000; industrial consumers $293,000; and government and municipal consumers approximately $6,000. Customers receiving wholesale service for resale and those on special contracts are not eligible for the rebate.

The order followed provisions of a directive issued by the commission in June, 1944, requiring the company to set aside a special fund for all revenues in excess of a "fair return" on its rate base. This fund totaled $1,965,234 as of June 30, 1946. Of this amount the consumers will receive $1,000,000; the company $500,000; and the remainder will remain in the fund. After taxes are deducted AP&L will net approximately $300,000, which will increase the returns received on investments for the period from June 30, 1944, to December 31, 1945, less than one-half of one per cent.

California

Transit Fares Raised

EMERGENCY increases in fare for both the Los Angeles Transit Lines and the Pacific Electric Company were granted recently by the state railroad commission, with authority that they be put into effect August 20th.

For the Los Angeles Transit Lines, the commission's order permitted increase of the 7-cent fare to 10 cents. Patrons, however, may purchase three tokens for 25 cents.

The two decisions were made entirely on an emergency basis, the commission members said, and would not necessarily affect final decisions which the commission still must render after more study.

But, meanwhile, the state commission denied the Transit Lines' application for increases in interzone fares. Likewise, the concern's request for permission to abolish the present weekly pass was denied, the price to remain as at present.

For the Pacific Electric, the commission granted an increase of approximately 15 per cent, but with numerous exceptions, in one-way and round-trip fares.

Gas Rate Increases Expected

THE Office of Price Administration has officially advised the state railroad commission that, under the new price control act, ceilings are off wholesale natural gas made from petroleum, it was reported recently. The effect of the ruling may be to boost gas rates for industrial users from approximately 15 per cent to as high as 40 per cent. The increase will be effective in industrial gas contracts where rates are geared to the price of fuel oil and will reflect fuel oil price increases of 40 cents a barrel since 1943.

Two of the state's big gas companies already have filed with the state railroad commission to raise their rates under fuel oil escalator clauses. Three others are understood to be in process of filing. Pacific Gas and Electric Company has asked authority for rate increases September 5th and Coast Counties Gas & Electric Company has filed for increases August 29th. Southern Counties Gas Company, Southern California Gas Company, and San Diego Gas & Electric were understood to be filing for increases September 5th.

Connecticut

Strike Threat Averted

A THREATENED strike by 2,000 bus and trolley operators employed by the Connecticut Company was averted recently when Saul Wallen of Boston was accepted by both sides as the third member of an arbitration board to settle a wage dispute.

Wallen, formerly chairman of the War Labor Board for the New England region, was appointed at a meeting called after the drivers voted on August 5th to authorize officials of their AFL union to call a strike if a deadlock blocking appointment of the third arbitrator could not be broken.

Wallen's appointment was accepted by Joseph E. Berry of West Hartford, arbitrator for the company, and David E. Fitzgerald, Jr., arbitrator for the union. Berry and Fitzgerald were named last April, but had been unable to agree on the third member of the board which will consider the union's demand for $1.25 per hour for a 40-hour week in place of the present $1.06 per hour for a 48-hour week.

Indiana

Trolly Fares Rise

INDIANA law prohibits an injunction against the state public service commission which would permit a charge of an unapproved transit token rate of three for 25 cents by Indianapolis Railways, Inc., James A. Emmert, attorney general, contended recently.

Mr. Emmert's allegation was contained in a brief filed on August 6th in Marion Circuit Court, where Indianapolis Railways sought an injunction to set aside a commission ruling denying the need for a higher token rate. The attorney general's office was representing commission members, who were named defendants in the case.

"Under Indiana law," the attorney general said, "the regulation of rates to be charged by a public utility is a function delegated to the public service commission. So long as there is reasonable evidence sustaining the commission's order, the courts will not interfere. In any event, a court is utterly without power directly or indirectly to fix rates."

However, Judge Horace L. Hanna on August 12th issued a temporary injunction restraining the state commission from interference and setting aside a commission order denying the need for an emergency rate. Judge Hanna set September 3rd as the date for a hearing on whether the injunction will be made permanent.

Commission Files Appeal

THE state public service commission early this month filed an appeal to the state supreme court on a decision by the Randolph Circuit Court denying the commission jurisdiction over the Panhandle Eastern Pipe Line Company. The commission contended before the Randolph court, because the Panhandle Company has consumers in the state, the commission should have authority over it, as well as other utilities in Indiana.

The court, however, accepted the Panhandle argument that the company is an interstate firm and therefore should not be controlled by any state commission.

Maine

Strike Is Settled

STRIKING public works department employees accepted unanimously recently Portland city council terms to end an 18-day strike which evoked a city-wide sympathy work stoppage by all AFL unions.

The stoppage, which Horace A. Howe, president of the Central Labor Union, said was "completely effective" among the 6,000 AFL membership, tied up all bus transportation for two days.

Trucking and building construction also were crippled.

Massachusetts

Fuel Charge Ruled Unauthorized

DECIDING unanimously that the Boston Consolidated Gas Company has been imposing an unauthorized fuel charge upon its customers since the middle of 1942, the state department of public utilities recently disclaimed the right to order rebates in the amount of $1,284,246. The department's decision was based upon customers' petitions and an intervening petition

which was filed by the mayor of Boston.

While finding that the gas company had been making the charges improperly, the DPU asserted that the rights of aggrieved parties must be decided by the Massachusetts courts, in the absence of statutory authority empowering the utilities board to act.

It appeared from the DPU order that, although Eastern Gas & Fuel Associates, of which Boston Consolidated Gas Company is a wholly owned subsidiary, was prevented by the Office of Price Administration from collecting increased amounts for gas sold to the Boston Company, the latter had billed its customers for the increase. The department found that, while these collections were not segregated, no direct payment of the excess had been made to EG&F. However, during the war years the amounts paid to the parent organization in dividends were substantially increased.

The department censured the company for contending that if it had not made the fuel clause operative, despite OPA's ban on price increases by Eastern Gas & Fuel, it would have been necessary for the Boston Company to petition for a general increase in rates. This, the department said, did not conform to law.

Higher Fares Wanted

JOHN I. DONOVAN, chairman of the board of trustees of the Eastern Massachusetts Street Railway Company, suggested recently that the line would have to increase fares to carry out a proposed recapitalization plan and buy new equipment.

Unforeseen obstacles, he said, had forced temporary abandonment of a plan under which first preferred stock would be called at 120.

Gross business of the company was running ahead of that of a year ago, he said, but the impact of wage increases aggregating $1,700,000 could be met "only by increases in fares in the near future."

Tax laws during the war, Mr. Donovan said, made it impossible for bus companies like Eastern Massachusetts to set aside reserves for new equipment. The company has 430 busses on order at a cost of more than $5,500,000, but they can be financed only through an "adjustment upward in the matter of fares."

Merrimac Valley Authority Proposed

THE bill introduced by Representative Thomas J. Lane of Massachusetts, calling for development of the Merrimac river along TVA lines, with the states of Massachusetts and New Hampshire participating, was recently reported to be viewed as an aftermath of the abandonment of the Merrimac region as a development project by the Army Engineers.

Representative Lane's bill stresses the need for flood control on the river, but also would make possible its development for the purposes of power generation and soil reclamation.

The Boston district office of the Corps of Engineers has announced that, since waterborne commerce on the river had ceased since 1936, the War Department proposed to close five bridges below Haverhill, Massachusetts.

The Merrimac has steadily declined in recent years, owing in part to the abandonment of the region by many industries, principally textiles, it was said.

Michigan

FPC Postpones Hearing

THE Federal Power Commission on August 8th announced an order postponing from August 22nd to September 9th the hearing set for reconsideration of an FPC order of October 31, 1945, under which Michigan Consolidated Gas Company, of Detroit, was classified as a "natural gas company" within the meaning of the Natural Gas Act.

The hearing, which will be held in Washington, D. C., was set in response to an application for rehearing by the company which denies that it should be subject to commission jurisdiction and asserts that the commission erred in its findings in the matter.

Minnesota

Union Spurns Pay Plan

UNION representatives of 1,500 Northern States Power Company employees on August 6th rejected wage recommendations of a state fact-finding commission. The board's proposal for a 7 per cent increase "leaves the union membership holding the bag on inflation," a spokesman told Governor Thye and representatives of St. Paul, Minneapolis, Stillwater, and St. Cloud at a conference.

T. D. Crocker, president, accepted the report for the company, although stating that it represents increases of more than 20 cents since VJ-Day "compared with a national pattern of 18½ cents."

The conference of some forty labor, management, and government representatives was

called by Governor Thye in an effort to head off a strike threatening to cut off electric, gas, and steam service in the Twin Cities and much of southern Minnesota.

Missouri

Voluntary Rate Reduction Filed

THE Kansas City Power & Light Company recently filed with the state public service commission a voluntary rate reduction amounting to an average 12½ per cent cut for residential users—estimated to amount to $1,800,000 a year.

The reduction, agreed upon by Kansas City officials and utility officers based upon a state commission accounting of the company's profits a month before, will take effect September 1st.

The reduction also would mean $96,000 saving in the contemplated $775,000 contract with the city of Kansas City for street lighting.

New Jersey

Seeks to Sell Gas Properties

NEW JERSEY POWER & LIGHT COMPANY has asked permission of the Securities and Exchange Commission to sell all its gas business and properties located in four counties in New Jersey in order to devote itself entirely to its electric business. Gross consideration for the properties is $361,000.

The company stated less than 7 per cent of its gross revenues for the twelve months ended April 30, 1946, were derived from the sale of gas. New Jersey Power, which is a part of the General Public Utilities Corporation holding company system, has contracted to sell the gas properties to Rena R. Garver, Calvin R. Garver, and Doris C. Fearon. The purchasers have formed three local companies to take title to and operate the gas properties when the SEC clears the sale.

New Mexico

Merger Permission Granted

DESPITE renewed protests from Albuquerque and Santa Fe on the proposed merger of the four New Mexico utility companies, the New Mexico Public Service Company has permission from the state public service commission to form the companies into a single corporation.

Commission Chairman W. W. Nichols explained that the commission "failed to find where the proposed transaction is unlawful or inconsistent with the public interest." Only the day before representatives from Albuquerque and Santa Fe again protested to the proposed plan and stated that such a merger would not benefit any of the municipalities involved, it was reported.

Attorneys for the city of Las Vegas also filed a formal protest, although Deming officials had wired that they would not appear in protest to the companies' position.

The new plan will merge the New Mexico Power Company, Las Vegas Light & Power Company, the Deming Ice & Electric Company, and the Albuquerque Gas & Electric Company into a single corporation.

In defending the companies' proposal, W. A. Eleher, attorney for the utility firms, told the state commission that the companies were not required by law to show that the merger would benefit the cities involved.

Eleher said that the rights of all concerned were being protected by the move. He pointed out that Santa Fe and Las Vegas were in need of help in solving water shortage problems and that it was the belief of the companies that such a merger would aid that situation.

North Carolina

Tax Bills Boosted

LARGELY because of the addition of new equipment and the extension of telephone and rural power lines, the valuation on public utilities in North Carolina has been raised by the state board of assessments from $304,439,915 in 1945 to $305,109,910 this year, the department of revenue reported recently.

Increases in the valuation of electric and gas companies from $114,752,773 to $115,291,448, and of telephone companies from $34,079,344

to $35,476,128, more than offset a decline in railroad properties from $151,802,964 to $150,560,409.

Miscellaneous utilities, such as the Pullman Company and Western Union, remained static at $3,666,927, but the valuation of water companies went down from $137,907 to $115,007 as a result of the sale of the Sunset Company at Wilmington to the city utility, wiping $23,000 off the tax books.

The largest increase among telephone companies was recorded for the American Telephone and Telegraph Company whose valuation rose from $7,213,465 to $8,727,527 chiefly because of the addition of new toll lines between Raleigh and Wilmington.

Ohio

Bus Purchase Planned

WALTER J. McCARTER, general superintendent of the Cleveland Transit System, has announced plans to seek municipal approval for the purchase of 250 additional trackless trolley coaches and gas busses at a cost of nearly $2,000,000.

This addition to the CTS fleet is in line with plans to have 1,500 vehicles in operation by 1950. Previously, McCarter had announced orders for 595 new trolley coaches and gas busses.

The latest order, if approved, will enable the company to replace worn-out equipment with new trackless trolley and bus operation.

Meanwhile, City Comptroller William H. Morrison revealed that the expected increase in competition from private automobiles, which Cleveland Transit System officials feared would reduce 1946 gross revenues, has failed to materialize.

Transit system revenue, Morrison said, is holding up beyond all expectations. Gross revenue for the first six months of this year is only $35,010 under the corresponding period last year, and revenue in the past few months has been climbing and is now 3.5 per cent higher than the same months a year ago.

Oregon

Merger of Utilities Voted

PORTLAND'S city council early this month followed the recommendation of Utilities Commissioner Dorothy McCullough Lee and passed an ordinance—over objections of farm and labor organizations—which will allow merger of Northwestern Electric Company and Pacific Power & Light Company.

"In my opinion, we have no just reason for refusing to consent to the merger," Commissioner Lee concluded after an hour-long explanation of her stand.

The council then voted first to accept her report recommending the action, then voted unanimously to pass the ordinance.

Action came at the end of a day-long hearing at which almost a score of businessmen, labor leaders, Oregon state grange officials, and other interested parties presented their views. The morning session was devoted to arguments of the opponents of the merger, several of them asking for a special ballot to decide the question.

Among charges hurled at the plan were assertions that it was the first step toward absorption of both companies by Washington Water Power Company, that customers of the efficient Northwestern Electric Company system would pay for rate reductions for customers of the less efficient Pacific Power & Light Company, that the city should include certain franchise conditions in the ordinance to protect its interests, and that Northwestern Electric Company was reversing the position it had taken when application was first made for franchise on grounds that Portland General Electric Company was a monopoly.

During the afternoon a long parade of Portland businessmen and civic figures passed before the council to ask that the merger be allowed and to praise Northwestern Electric for the service they had had from it.

John A. Laing, company attorney, briefly offered counterargument that the company was not reversing its stand as to monopoly since the merger was with a company not now competing with Northwestern in Portland.

PUD Suit Target

THE Union County People's Utility District early this month was attacked anew on its operations as directors were served with copies of the third suit to be brought against the district since July 6th.

The new suit questions maneuvers by the district leading up to the sale of $825,000 in revenue bonds to an investment firm. The PUD had sought the funds for the announced purpose of acquiring a portion of the electric system in the confines of the district.

This purpose, according to the complaint, is "illegal and void in that bonds were originally

authorized by the people to acquire all of the electric system within the territorial confines of the district."

The action was brought by Henry Hermann and Ralph Chenault to test validity of a PUD ordinance and amendment authorizing sale of the bonds and acceptance of a bid for them under the present PUD plan.

Pennsylvania

End Row on Schedules

THE Philadelphia Transportation Company and Local 234, Transport Workers Union (CIO), recently announced a solution of their controversy over operating schedules. The agreement gives the union an important voice in settling differences arising over the schedules.

The accord was reached on the eleventh day of the union's "safety and courtesy" campaign, which the PTC management contended was simply a "slowdown."

It was expected that operation of the system would now return to normal. But the union insisted it had "no intention of relaxing its efforts to give a safe and courteous ride to the people of Philadelphia and proper rest time to the operating force."

PTC accepted a union demand to reinstate ten employees who were suspended during the controversy for failure to obey supervisors.

May Bar Union Profit Sharing

A PROFIT-SHARING plan demanded by the Independent Association of Employees of the Duquesne Light Company was recently said to be impossible under present policies and regulations of the state public utility commission.

The employees, who threaten to strike August 31st, want to share in company earnings in excess of 6 per cent. They propose that one-third of the excess be distributed among them and that two-thirds be refunded to consumers.

The commission allows a utility a return of 6 per cent on what is determined to be the "fair value" of the company's properties. Out of that 6 per cent return it is customary for utilities to pay interest on their bonds and notes and dividends.

If the return rises above 6 per cent, the utility is required by the commission to reduce its rates. Thus any profits over 6 per cent would go back to the consumers in lower rates and no part would be available for distribution to the workers.

Officials said that the commission has no concern with what a utility does with its allowable 6 per cent return—it could share that with the workers if it chooses.

George L. Mueller, president of the Independent Association of Employees of the Duquesne Light Company, said that the legality of the union's profit-sharing plan depended upon "how you look at it."

In commenting on the report that the plan would be "impossible" under the regulations and policies of the state public utility commission, Mr. Mueller said:

"Any portion of the earnings of the company which is returned to the employees in any form may be charged off as operating cost. The 6 per cent regulation may then be applied to the remainder and if a rate of reduction is desirable it may be so ordered."

Mr. Mueller explained that since the firm was allowed to earn 6 per cent of its property evaluation, or its investment, and since its property was evaluated at approximately $150,000,000, the legal return would be about $9,000,000.

Washington

PUD Takes Plan to High Court

A BRIEF asking state supreme court reversal of a Skagit County Superior Court verdict ordering him to sign and seal purchase bonds and contracts in connection with the proposed purchase of Puget Sound Power & Light Company assets was filed on August 5th by John Wylie, secretary of the Skagit Public Utility District.

In his brief, Wylie declared that 98 per cent of the Puget Sound's assets are outside the Skagit PUD's limits and PUD law does not authorize a PUD to acquire vast electric systems outside its boundaries "in order to form a superpower district."

Wylie also asserted that to permit Skagit District to impose electric rates upon users in King, Pierce, and Island counties, where there are no PUD's, "is a violation of the due process and equal protection clauses of the state and Federal constitutions."

The supreme court on August 1st received the first brief in the case to test legality of the proposed $135,000,000 purchase of Puget Sound Power & Light by Skagit County Public Utility District.

The brief, filed by Weyerhaeuser Timber Company, intervener and appellant, also asked reversal of the Skagit Superior Court. Weyerhaeuser contended the lower court erred on 14 counts.

The Latest Utility Rulings

Incorporators of Coöperative Not Required To Obtain Commission Certificate

An electric coöperative incorporated under the Pennsylvania Electric Coöperative Corporation Act is exempted from the jurisdiction and control of the commission. Such a coöperative is not a public utility within the meaning of the Public Utility Law. Therefore, it is held by the Pennsylvania Supreme Court that the incorporators of a proposed coöperative need not obtain and file with the secretary of the commonwealth a certificate of public convenience from the public utility commission as a prerequisite to the issuance of a certificate of incorporation.

An electric company seeking to prevent the issuance of a certificate of incorporation argued that the exemption attached only in respect of actually incorporated and organized coöperatives. It contended that, until that status is reached, the Public Utility Law intrudes to require of the incorporators a certificate of public convenience. The company argued that the proposed coöperative was a public utility because it would possess attributes such as are possessed by public utilities. For example, it would have power to condemn private property for corporate uses and the right to place facilities upon public highways.

The court questioned how a coöperative could be incorporated otherwise than by following the steps prescribed by the Electric Coöperative Corporation Act for incorporation. Among the steps prescribed, no requirement of a certificate is to be found. The court added:

> The differentiation, which the appellant strives to make, between incorporators, associated solely to achieve the incorporation of a coöperative, and the incorporated coöperative itself is tenuous to say the least. If given effect, it would make the Public Utility Law applicable to a coöperative in the first step towards its incorporation but not thereafter. Neither the plain language nor the clear intent of the Electric Coöperative Corporation Act requires any such anomalous result.

Pennsylvania Electric Co. v. Morrison et al.

Federal Commission Asserts Authority Over Fundamental Accounts

The Federal Power Commission, in prescribing accounting entries for a public utility, discussed the question whether its accounting requirements control the basic corporate books of account of a public utility or licensee. This question arose by reason of a reservation in a power company application for approval of accounting entries.

The reservation was to the effect that entries were being submitted for the sole purpose of meeting the accounting requirements of the uniform system of accounts prescribed by the commission. The company did not recognize or admit the necessity or propriety of such entries for any other purpose, or for establishing values for rate making. The reservation, according to the company, also included but was not limited to the right of the company in the future to maintain plant acquisition adjustments on its books for purposes other than the accounting requirements of the Federal commission.

The commission referred to its earlier rulings and to judicial decisions sustaining commission orders. It said that a review of the legislative history of the Federal Power Act indicated clearly that Congress knew that uniform and comprehensive accounting authority was not only desirable but a vital necessity to effective regulation. If companies are permitted to reflect in their basic corporate books entries at variance with those required by the uniform system or commission orders, it was said, the way would be immediately opened for a return "to the accounting abuses revealed by the Federal Trade Commission's investigation." The commission concluded:

> Awareness of the foregoing fact caused Congress to provide that our accounting authority be comprehensive and extend to the basic books of accounts of public utilities and licensees. This authority is set forth specifically in § 301 of the Federal Power Act and is supplemented by other provisions of the act, including § 302 which deals with the fixing of depreciation rates and accounting for depreciation, § 305 which prohibits the payment of dividends from funds includible in capital account, and the provisions of § 203 dealing with consolidations and mergers. Frequently the most important question presented in consolidation and merger proceedings relates to possibility of introducing inflation in the plant accounts and the capital structure, and this the commission would be unable to prevent if the utility's basic corporate accounts are not kept according to its orders. In other words, if the corporate accounts in respect to the capital, surplus plant and depreciation in particular, are not kept according to this commission's requirements, important provisions of the Federal Power Act will be rendered nullities.

A power company, declared the commission, is required to reflect the entries prescribed by commission order on its fundamental corporate books of account, and any failure to do so will be regarded as a violation. The commission observed, however, that public utilities and licensees may keep supplementary and memorandum accounts, provided the integrity of the uniform system is not impaired. *Re Northern States Power Co. (Opinion No. 138).*

Discriminatory Municipal Water Rates Eliminated

THE Wisconsin commission found existing water rates of a city plant for fire-protection service and general service unreasonable and unjustly discriminatory. It prescribed a rate schedule which it deemed reasonable.

For the purpose of this investigation the rate base was predicated upon book value, to which materials and supplies and working capital were added. The depreciation reserve balance and contributions in aid of construction were deducted. A rate of return of 5 per cent was considered fair and reasonable.

The commission said that since every water utility normally supplies two major classes of service—namely, fire-protection service and general service—expenses must be allocated to these services. Such an allocation revealed that the utility failed to cover all costs on a 5 per cent return basis. This shortage, the commission observed, resulted from a failure to charge for fire protection what could be equitably assigned to this service. On the other hand, it was found that general service customers were being charged in excess of reasonable rates.

Existing rates, said the commission, were not such as best fit modern waterworks practices. Capacity and demand costs which exist whether any water is used or not should be spread over the sizes of the meters in use in proportion to the demands which each size can make on the system.

A large-scale, long-hour user would be entitled to a lower average rate than the short-hour customer. Such a consumer, it was noted, keeps the plant loaded when otherwise material variations in the load curve would occur. As a general rule, the commission said, many water utilities in the smaller communities carry much stand-by and idle equipment during a substantial portion of the day.

With these principles in mind, the commission held that it was more equitable to withdraw the existing schedule of rates for general service and establish a more up-to-date schedule—one that would provide for a minimum quarterly bill (covering those consumer costs, capacity costs, and at least fixed charges on the meter) and varying with the demands each size meter could handle. Included in the minimum for each size meter would be the same fixed quantity of water, such as 800 cubic feet per quarter. *Re City of Marshfield (2-U-2136).*

Trucking Company Termed a Common Carrier and Exempted from Price Control Act

A PROVISION of the Emergency Price Control Act exempting common carriers from price regulations was the basis for a judgment by the Federal court for the eastern district of Illinois against the OPA Administrator, who sought to recover overcharges and restrain future price violations.

The common carrier status of the trucking company was questioned by the Administrator. He urged that certain business practices of the defendant evidenced a relationship to the public other than that of a common carrier.

The Administrator's objections that the carrier only held himself out to carry a particular kind of property, did not have regular rates or routes, and was classified under a state law as a "local" carrier were overruled by the court. It was pointed out that one need not carry any or all types of property on specific routes at specific rates to be a common carrier.

The common carrier status of a trucking company is not affected by its being called a "local" carrier in a state where a "local" carrier is the same as a common carrier under the Interstate Commerce Act and common law. *Bowles, Administrator, OPA v. Wieter, 65 F Supp 359.*

Motor Carrier Act Not Applicable to Air Carriers

ON appeal from a lower court judgment vacating a commission order granting an air carrier a certificate of convenience and necessity, the supreme court of Mississippi carefully examined the Motor Carrier Act to determine whether it was sufficiently comprehensive to embrace air carriers. The definitions of motor vehicle and carrier were considered broad enough to include air carriers, but "highway" by the terms of the act could only refer to roads and streets on the ground and not air routes.

The court further ruled that competing air and rail carriers were proper parties to object to such lack of authority in their efforts to avert the hazards of new competition with attendant division of business, contest for customers, and struggle for survival. *South Mississippi Airways et al. v. Chicago & Southern Airlines et al. 26 So2d 455.*

Jurisdiction Challenge by Co-op Sustained

A RURAL electric coöperative corporation challenged the jurisdiction of the North Dakota commission to issue certificates of convenience and necessity to coöperative corporations principally on the ground that co-ops are organized under a special statute, the Electric Coöperative Corporation Act, which is complete in itself, controls the status of organizations formed thereunder, and con-

fers no jurisdiction on the state commission.

Counsel for the co-op pointed out that co-ops are not public utilities under the Public Utility Act because only members are benefited by their service.

The coöperative argued that since the only jurisdiction possessed by a commission is that expressly conferred by law or arising by reasonable implication from express powers granted, and since neither the Electric Coöperative Corporation Act nor the Public Utility Act confers on the commission any authority over coöperatives, it must be accepted that the commission lacks jurisdiction.

In deciding the matter in favor of the co-op, the commission stated:

> . . . while the question is not free from legal doubt, the contention that this commission has no jurisdiction to issue certificates of public convenience and necessity to electric coöperative corporations has substantial merit, and should be sustained until the legislative intent can be clarified either by appropriate legislation or by judicial interpretation.

Re Cavalier Rural Electric Coöperative, Inc. (Case No. 4250).

Brotherhood's Complaint against Railroad Dismissed

A COMPLAINT by a trainmen's brotherhood against a railroad, charging that the use of a 4-man crew (engineer, fireman, two switchmen) at a switching point created a hazard and requesting that the commission require the railroad to employ 5-man crews (including three switchmen) at such points was dismissed by the Missouri commission. The proof failed to show that use of the alleged "short crew" was an unsafe practice.

The commission conceded that car movements were slowed and transportation delays resulted where only two switchmen were used, but such delays were not adequate evidence of any particular danger.

The commission believed that it would not be justified in substituting its judgment for that of railroad management as to the most efficient manner of operation of its trains, unless the company's practice were adversely affecting the public convenience and necessity of the patrons, employees, or public. *Brotherhood of Railroad Trainmen v. Atchison, Topeka & Santa Fe Railway System (Case No. 10699).*

Grade Separation Considered Practicable

A PETITION by the state superintendent of public works for a determination that the separation of grade of the Bronx River parkway and the tracks of the New York, New Haven & Hartford Railroad Company is practicable was granted by the New York commission. The commission considered such factors as topography and other physical conditions of the locality. The cost of the grade separation would not be disproportionate to the total cost of a large important highway free of grade crossings. The desirability of avoiding interference with improved property also was noted. Separation of grades, it was concluded, could be effected at the site chosen.

In discussing the meaning of the term "practicable" in those sections of the Railroad Law pertaining to separation of grades at highway-railroad crossings, Commissioner Maltbie referred to an opinion of the Indiana Supreme Court in which it was stated:

> Plainly it is not synonymous with "possible." A thing practicable must necessarily be possible, but a thing may be possible that is not practicable. It cannot refer to apparent difficulties and cost alone, or the words "find practicable" become an ideal phrase, for under modern engineering skill there is hardly anything incapable of accomplishment at some cost.

Re Superintendent of Public Works (Case 12438).

Other Important Rulings

THE supreme court of Michigan took cognizance of an Interstate Commerce Commission rule permitting demurrage at lower rates where delivery was prevented by strike of consignee's employees, but reversed a lower court ruling that a carrier might collect less than full amount for demurrage, where the consignee had failed to meet the procedural requirements of filing claim for a reduced rate within thirty days of the time the interference with delivery ceased. *Pennsylvania Railroad Co. v. Evans Products Co. 22 NW2d 754.*

A commission order granting a certificate of convenience and necessity to a bus company proposing to serve suburban communities was reversed by the Ohio Supreme Court where it appeared that irrelevant testimony of city residents was a controlling factor in the conclusion reached by the commission as to public need for the proposed service. *Columbus & Southern Ohio Electric Co. v. Public Utilities Commission, 66 NE2d 537.*

An action brought to recover the sale price of a certificate of convenience and necessity was decided by the Louisiana Supreme Court in favor of the would-be purchaser, when the record indicated that the right of the holder of the certificate to sell the same was limited by an agreement to retransfer to its original owner should he ever decide to go out of the cartage business. *Graziani v. Elder & Walters Equipment Co., Inc. 25 So2d 904.*

The Federal District Court for Alabama dismissed a proceeding to set aside an Interstate Commerce Commission order denying a "grandfather" application, and ruled that whether a carrier has engaged in bona fide operations prior to the critical date for "grandfather" rights is a question of fact for the commission to decide, and when its decision is based on substantial evidence it will not be disturbed. *Howard Hall Co., Inc. v. United States et al. 65 F Supp 166.*

The Pennsylvania commission denied as unnecessary a *subpoena duces tecum* to require production of railroad records for the purpose of providing the public use of a siding where it was apparent that the siding was an integral part of the railroad system and clearly a "public highway." *Limbach Co. v. Baltimore & Ohio Railroad Co. (Complaint Docket No. 14101).*

An appeal from a commission order granting a power company's application for authority to issue and sell serial notes to retire preferred stock was dismissed by the Nebraska Supreme Court where the objector, a customer using a large quantity of electric energy, did not show how its rights would be adversely affected. *Nebraska Power Co. v. Omaha Ice & Cold Storage, Inc. 23 NW2d 312.*

The Montana commission ruled that the grouping of gas meter readings for certain public institutions and the rendering of bills based on consolidated readings result in lower rates than those specified in filed schedules and constitute an unlawful concession. *Re Great Falls Gas Co. (Docket No. 3434, Order No. 1871).*

In ordering that a water utility improve its facilities and service after investigation had shown many deficiencies, the California commission observed that a utility's failure to comply with a commission order must necessarily result in the instituting of contempt proceedings under the Public Utilities Act. *Re Henry (West Sacramento Water Co.) (Decision No. 38982, Case No. 4819).*

Findings of the Civil Aeronautics Board that to grant a certificate to one of two rival applicants would be economically sound and that public interest would be served by a continuance of such applicant as a strong competitive economic force in national air transportation, and that to do otherwise would be economically injurious to such applicant,

thus precluding a continuation of the strong competitive and economic force in the national air transportation, constituted sufficient foundation for the granting of the certificate without an attempt to compute in dollars the results of each course, according to the United States Court of Appeals for the District of Columbia. *United Air Lines, Inc. v. Civil Aeronautics Board et al. 155 F2d 169.*

In approving a telephone company's application for authority to increase rates, the Wisconsin commission disapproved of subscriber ownership of instruments because of the impairment of service which often results from poor maintenance and recommended that all instruments connected to the company's lines be acquired as soon as practicable. *Re Mill Creek Telephone Co. (2-U-2155).*

An agreement between competing taxi services in which one company stipulated agreement to the other's receiving a certificate of convenience and necessity is helpful to the commission in preparing its order, but, the Colorado commission stated, competitive carriers cannot define their authority as that is the duty of the commission, after hearing has been held and sufficient showings made. *Re Schlangen (Decision No. 26002, Application No. 7274).*

A motor carrier certificate of convenience and necessity was canceled by the Colorado commission where service under the certificate had been discontinued for approximately six and one-half years. *Schaeffer v. West (Case No. 4938, Decision No. 27035).*

An application for a certificate to operate a taxicab service was denied by the Colorado commission where the community was more in need of scheduled bus service since the bus service would serve a larger number of people for less money. *Re Rehder (Application No. 7369, Decision No. 26102).*

The New York commission approved a carrier's application for authority to substitute busses in place of streetcars and reaffirmed its policy of encouraging such substitutions in the interest of economical and efficient service. *Re United Traction Co. (C 12503).*

In authorizing a carrier to render bus service to supplement service of city-owned streetcar lines, the Colorado commission gave weight to city support of the application and stated that the commission, in coöperating with the city, should foster the establishment of adequate line-haul bus service to handle mass transportation (city and intercity) at low rates. *Re Woods (Application No. 7498, Decision No. 27014).*

Objection to the granting of an unrestricted certificate to a contract carrier, based on the claim that the shippers to be served must be specifically named in the certificate of a contract carrier, was overruled by the Indiana commission, which ruled that no such requirement need be met in regard to the certificate of such carriers. *Re Publix Oil Corp. (No. 1585-B, 3).*

The New York commission held that a through motor carrier must give reasonably adequate local service as well as through service, and that, if that obligation is not discharged, the carrier cannot complain if local consents are given to competitors but must face the possibility that in time such consents may be amalgamated into a competing through system. *Re Adirondack Transit Lines, Inc. (Case 8632).*

In granting authority to transport race and show horses intrastate, the Pennsylvania commission ruled that the proposed service need not be established as absolutely necessary but only as reasonably necessary for the convenience of the public. *Re Seifert (Application Docket No. 65766).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTS

OF CASES TO APPEAR IN

Public Utilities Reports

COMPRISING THE MORE IMPORTANT DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 64 PUR(NS) NUMBER 3

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TITLES

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Re Natural Gas Pipeline Company of America et al.

Docket No. G-651

Re Chicago District Pipeline Company

Docket No. G-664
Opinion No. 133
May 10, 1946

APPLICATION *for authority to construct and operate additional natural gas pipe-line facilities; granted.*

Interstate commerce, § 37.1 — Status of pipe-line company — Scope of Natural Gas Act.

1. Companies engaged in the transportation and sale of natural gas in interstate commerce for resale by means of a natural gas pipe-line system are natural gas companies within the purview of the Natural Gas Act, p. 134.

Certificates of convenience and necessity, § 104 — Natural gas pipe-line construction — Inadequacy of existing facilities.

2. Construction and operation of additional natural gas pipe-line facilities should be authorized where, if estimated future firm requirements in the areas involved are realized, and expected demands in new market areas are to be supplied, such additional pipe-line capacity is necessary, where manufactured gas facilities upon which the area depends for its supply are nearing the end of their service ability and are being used to capacity, and where, if the authority is granted, retail companies being supplied by the pipe-line company will be able to reduce rates and will not need to make costly repairs to existing manufactured gas plants, p. 135.

Security issues, § 106 — Financing of pipe-line construction — High interest rate.

3. The financing of proposed natural gas pipe-line facilities with 6 per cent debt securities was not disapproved by the Commission although it believed the interest rate to be completely out of line with prevailing conditions in present money markets, it believing that since the bonds were to be issued to the company's affiliate, the transaction was an interdepartmental one which was not inimical to the public interest, p. 145.

Monopoly and competition, § 3 — Natural gas pipe-line construction — Effect on coal and railroad industries.

4. The economic impact upon the coal industry, the railroads, and those employed in these industries, constitutes only one of the factors to be con-

sidered in passing upon an application for authority to construct natural gas pipe lines and should not preclude such construction and operation if public necessity therefor exists, p. 150.

APPEARANCES: James W. Williams, William J. McBrearty, and Schuyler L. Marshall, for Michigan Public Service Commission; L. E. Clevenger, for Kansas Corporation Commission; Lynn H. Ashley, Frederick G. Hemmery, and H. J. O'Leary, for Wisconsin Public Service Commission; John P. Randolph, for Public Service Commission of the state of Missouri; Warren Henry and Daniel A. Roberts, for Illinois Commerce Commission; Charles W. Babcock, for city of Milwaukee, Wisconsin; John C. Doerfer and Arnold Klentz, for city of West Allis, Wisconsin; William E. Dowling and James H. Lee, for city of Detroit, Michigan; Charles E. McGee, Lambert McAllister, Robert Russell, and William L. Brunner, for Federal Power Commission; D. H. Culton, J. J. Hedrick, and W. T. Spies, for Natural Gas Pipeline Company of America and Texoma Natural Gas Company; Donald R. Richberg, Park Chamberlain, Wheat, May, Shannon & St. Clair by Carl I. Wheat and Robert E. May, for Michigan-Wisconsin Pipe Line Company; Robert C. Foulston and Lawrence I. Shaw, for Northern Natural Gas Company; John S. L. Yost, Ira Lloyd Letts, D. H. Culton, and Edward H. Lange, for Panhandle Eastern Pipe Line Company; Daily, Dines, White & Fiedler by Francis L. Daily, John M. Connery, Malcolm J. Gillis, and Joseph H. Mueller, for Chicago District Pipeline Company; Joseph M. Crawford, for Pocahontas Operators Association; Tom J. McGrath, for Order of Railway Conductors, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Switchmen's Union of North America; Tom J. McGrath and James W. Haley, for National Coal Association; Tom J. McGrath and Welly K. Hopkins, for United Mine Workers of America; Amos M. Mathews, for Western Railroads; Roy S. Kern, for Baltimore and Ohio Railroad and other Eastern Railroads; Philip H. Porter, for Lake Michigan Docks Association, Wisconsin Upper-Michigan Fuel Dealers Association, Solid Fuel Institute of Milwaukee County, Wisconsin; Daniel D. Carmell, for Coal Drivers, Helpers and Handlers Union, Local 704; A. G. Goldberg of Padway & Goldberg, for Associated Coke Plant Employees, etc.; Joseph B. Fleming and Manly S. Hunt, for Chicago Coal Merchants Association; Philip H. Porter, for Wisconsin Coal Bureau, Inc. and Wisconsin Upper-Michigan Fuel Dealers Association, etc.; Charles E. Mahan and S. C. Higgins, Jr., for Winding Gulf Operators Association; George B. Pidot, for North Shore Gas Company and Central Illinois Gas and Electric Company; Charles E. Mahan and S. C. Higgins, Jr., for New River Coal Operators Association; Dale H. Fillmore, for city of Dearborn, Michigan; Charles W. Stadell and A. J. Christiansen, for Central Illinois District Coal Operators Committee, etc.; Robert H. Allison, for District No. 12, United Mine Workers of America; George D. Horning,

for National Coal Association, Anthracite Institute.

By the COMMISSION: This proceeding involves (1) the joint application of Natural Gas Pipeline Company of America (Natural) and Texoma Natural Gas Company (Texoma) and (2) a separate application by Chicago District Pipeline Company (Chicago District) seeking certificates of public convenience and necessity under § 7(c) of the Natural Gas Act, 15 USCA § 717f(c), as amended, to authorize the construction and operation of additions to existing pipeline facilities. The estimated cost of the facilities proposed to be installed is $16,721,723 for Natural, $2,509,352 for Texoma, and $1,208,600 for Chicago District, a total of $20,439,675 for the three applicants.

On July 13 1945, Natural and Texoma, both being corporations organized and existing under the laws of the state of Delaware, filed a joint application, as supplemented, to authorize applicants jointly, but each in respect to the facilities to be constructed by it, to construct and operate additional pipe-line facilities [1] to provide

[1] *Facilities which Texoma seeks authority to construct:*

	Estimated Cost
(a) Four new compressor engines of 1,250 horsepower each at Texoma's compressor station No. 22 in the Panhandle field, to increase the total installed capacity at said station from 4,000 to 9,000 horsepower; and also additional capacity in the dehydration and natural gasoline plant facilities located at such station	$1,367,406
(b) 25.86 miles of 26-inch pipe line extending from a point near Gray, Oklahoma, in a southerly direction to loop the existing 24-inch pipe line	962,907
(c) Meters, regulators, and other appurtenances, including employees' cottages, necessary or convenient for the utilization of the facilities described in (a) and (b)	179,039
Total estimated cost to Texoma	$2,509,352

Facilities which Natural seeks authority to construct:

	Estimated Cost
(a) A 26-inch loop line for a distance of 38.86 miles beginning at Station No. 2 and ending at the south header of the Cimmarron river crossing	$1,764,024
(b) A 26-inch loop line 66.19 miles in length beginning at the north end of the existing 26-inch loop near Garfield, Kansas, extending through Station No. 4 and ending at the existing 26-inch loop near Wilson, Kansas	2,815,027
(c) A 26-inch loop line 69.78 miles in length beginning at the north end of the existing 26-inch loop near Haddam, Kansas, extending through Station No. 6 and ending at the existing 26-inch loop near Unadilla, Nebraska	$2,853,904
(d) A 26-inch loop line 69.83 miles in length beginning at the east end of the existing 26-inch loop near Orient, Iowa, extending through Station No. 8 and ending at a point 34.70 miles east therefrom	3,129,121
(e) Two 20-inch lines with a span distance of 1.38 miles across the Des Moines river and flood valley at the west end of the existing 26-inch loop near Tracy, Iowa	364,196
(f) A 26-inch loop line 40.44 miles in length beginning at the east end of the existing 26-inch loop near Ardon, Iowa, and ending at a point near Crampton, Illinois	2,394,378
(g) A 24-inch loop line 52.27 miles in length beginning at a point near LaSalle, Illinois, and ending at the Joliet Regulator Station	2,209,293
(h) A 2-inch lateral line approximately 6.75 miles in length, extending from Natural's pipeline system at a convenient point north of the city of Creston, Iowa, to the vicinity of its city limits	36,481
(i) A 2-inch lateral line, approximately 3.2 miles in length, extending from Natural's pipeline system at a convenient point north of the city of Washington, Iowa, to the vicinity of its city limits	$17,106
(j) A 2-inch lateral line, approximately 10 miles in length,	

increased pipe-line capacity to meet increasing firm gas requirements of markets presently served and to serve certain new markets. The new markets which Natural proposes to serve are the following:

New Markets	Distributing Company	Population
Approximately 25 towns in Illinois including Winnetka, Waukegan, Highland Park, Lake Forest, and North Chicago.	North Shore Gas Co.	119,000
Creston, Iowa	Central States Electric Co.	8,033
Washington, Iowa	Iowa Southern Utilities Co.	5,227
Mendota, Illinois	Illinois Northern Utilities Company	4,215
Rockford, Illinois (present service by Natural includes 10% of domestic and 85% of industrial requirements)	Central Illinois Electric & Gas Company	78,737
Freeport, Illinois	"	22,366
Pecatonica, Illinois	"	1,302
Rural	"	2,700
Total population of proposed new markets		241,580

Chicago District, a corporation organized and existing under the laws of the state of Illinois, in its application of September 17, 1945, seeks authority (1) to construct and operate two sections of 24-inch loop lines, aggregating approximately 23.06 miles, along its Crawford line in Will, Cook, and Dupage counties, Illinois, with necessary appurtenant facilities, at an estimated cost of $1,208,600, and (2) to serve Public Service Company of Northern Illinois at a new point of delivery near Volo, Lake county, Illinois.

The daily sales capacity of Natural's existing pipe-line system is presently 279,000 thousand cubic feet stated on a 1,000 BTU basis.[2] The new facilities proposed by Natural (including facilities proposed by Texoma) will increase such sales capacity to 364,000 thousand cubic feet, a net increase of 85,000 thousand cubic feet.

Pursuant to the Commission's order of December 5, 1945, the matters involved in the joint application of Natural and Texoma (Docket No. G-651) and the application of Chicago District (Docket No. G-664) were

extending from Natural's pipeline system at a convenient point south of the city of Mendota, Illinois, to the vicinity of its city limits	$63,040
(k) Two railroad crossings to complete the 19.75 mile section of 20-inch pipe line extending from the north header of Coon Creek near Garden Prairie, Illinois, to the Main Line Gate Valve No. 9 near Greenwood, Illinois	7,417
(l) A lateral line consisting of 18.50 miles of 16-inch pipe, extending from the said 20-inch pipe line at Main Line Gate Valve No. 9 near Greenwood, Illinois, easterly to a point near Volo, Illinois, thence the lateral will be extended easterly, by constructing 7.63 miles of 8-inch pipe, to a point near Grays Lake, Illinois	806,042
(m) All meter settings, pressure regulating devices, and other appurtenances necessary or convenient for the utilization of the facilities described above	261,694
Total estimated cost to Natural	$16,721,723

[2] Natural gas "as metered" by Natural averages approximately 1,040 BTU per cubic foot but for billing purposes such gas is converted to a 1,000 BTU per cubic foot equivalent. Natural's daily pipe-line capacity on an "as metered basis" (1,040 BTU) is 268,000 thousand cubic feet. The new facilities proposed will increase that capacity by 81,000 thousand cubic feet, to a total capacity of 349,000 thousand cubic feet. Unless otherwise stated the figures used throughout this opinion, in so far as they relate to sales and pipe-line capacity, will be stated on a 1,000 BTU basis.

consolidated with pending applications of Natural and Texoma (Docket No. G-231)[2a] for authority to extend pipeline facilities into the state of Wisconsin, and the application of Michigan-Wisconsin Pipe Line Company (Docket No. G-669) seeking authority (1) to construct a new pipe-line system from gas fields in Texas and Oklahoma through the states of Kansas, Iowa, Illinois, Wisconsin, and Michigan, and (2) to sell gas for resale within such territory. At the time these dockets were consolidated it appeared that the public interest would be best served by hearing testimony and evidence in all dockets before acting upon the application in any docket. However, the testimony and evidence adduced in Docket Nos. G-651 and G-664 indicate that there is presently no real conflict of interest in such dockets (except as concerns service to Creston and Washington, Iowa) and public convenience and necessity require an early disposition of applications by Natural, Texoma, and Chicago District if adequate natural gas service is to be assured in the communities served, or to be served, by them.

According to its own application, Michigan-Wisconsin is not and will not be in a position to serve any market until after January 1, 1948. In the meantime Natural must continue service to the markets it now serves and provide service to meet increased demands including service in new areas where service is required in the public interest. There can, therefore, be no justification for delaying action on the pending applications (Docket Nos. G-651 and G-664) until the application of Michigan-Wisconsin has been concluded. Accordingly, we will dispose of the joint application of Natural and Texoma in Docket No. G-651 and the application of Chicago District Pipeline Company in Docket No. G-664, without awaiting the conclusion of the hearings on Michigan-Wisconsin's application in Docket No. G-669.

After due notice, opening statements of counsel on behalf of all applicants, counsel for interveners, and Commission counsel were heard in the above-consolidated dockets (G-231, G-651, G-664 and G-669) in Washington, D. C., on January 8, 1946. Thereafter, hearings were held in Chicago, Illinois, concerning matters involved in the joint application of Natural and Texoma (Docket No. G-651) and Chicago District (Docket No. G-664). Testimony was also heard at the same time on behalf of North Shore Gas Company and Central Illinois Electric and Gas Company, interveners, who undertook to show that they were in urgent need of a natural gas supply from Natural to supplant inadequate and worn-out manufactured gas facilities. These hearings extended from January 14, 1946, through January 24, 1946.

Further hearings being recessed to March 4, 1946, Natural, Texoma, and Chicago District on February 8, 1946, filed a joint motion (1) to separate the proceedings in Docket Nos. G-651 and G-664 from the proceedings in Docket Nos. G-231 and G-669, (2) for oral argument upon the matters involved in Docket Nos. G-651

[2a] On April 15, 1946, the Commission entered an order permitting Natural and Texoma to withdraw their application in Docket No. G-231.

and G-664 at the conclusion of the hearings to reconvene in Chicago on March 4, 1946, and (3) for a decision by the Commission upon the applications in Docket Nos. G-651 and G-664 without waiting for the conclusion of the hearings in Docket Nos. G-231 and G-669.

Upon consideration of such joint application, the Commission by its order of March 11, 1946, assigned the matters involved in G-651 and G-664 for oral argument in Washington, D. C., on March 25, 1946. The hearings upon such applications (G-651 and G-664) being concluded in Chicago on March 11, 1946, oral argument was had as provided by the Commission's order and counsel for the applicants in such dockets, upon argument, stressed the fact that estimated requirements for the winter season of 1946–1947, as shown by the record of the hearings, clearly demonstrated that applicants' peak day firm requirements would exceed existing pipe-line capacity; that early consideration and determination of the applications in Docket Nos. G-651 and G-664 were necessary and desirable in the public interest; and that if such increased pipe-line capacity was to be provided to meet estimated peak day demands, early decision by the Commission was necessary in order that pipe and required equipment could be placed on order for earliest possible delivery so that the installation of loop lines and equipment could be completed in time to meet peak day firm requirements for the forthcoming winter season.

Jurisdiction

[1] Natural and Texoma, joint applicants in Docket No. G-651, are engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale by means of a natural gas pipe-line system comprising the following facilities:

(1) The Texoma system extends from its Fritch station in Hutchison county, Texas, approximately 73.5 miles in a northeasterly direction to and across the Texas-Oklahoma state line and thence a distance of 4.8 miles to a point near Gray, Oklahoma, where it connects with the natural gas pipe-line of Natural;

(2) The system of Natural extends from its connection with Texoma near Gray, Oklahoma, in a general northeasterly direction approximately 37.9 miles to and across the Oklahoma-Kansas state line; 277 miles in Kansas to and across the Kansas-Nebraska state line; 96.3 miles in Nebraska to and across the Nebraska-Iowa state line; thence generally easterly approximately 255.9 miles in Iowa to and across the Iowa-Illinois state line; 155.9 miles in Illinois to a point approximately 2 miles west of Joliet, Illinois, with a 20-inch branch line extending generally northeast from its Geneseo, Illinois compressor station to a point 29 miles southwest of the Illinois-Wisconsin state line.[3]

Natural gas produced by Texoma in the Panhandle field of Texas, as well as natural gas purchased by Natural from Colorado Interstate Gas Company and delivered by Cana-

[3] Natural also owns approximately 29 miles of 20-inch pipe line extending to the Wisconsin-Illinois state line. This line is complete except for railroad crossings. (See [1945] Docket Nos. G-236 and G-536, 60 PUR(NS) 291.)

dian River Gas Company to Texoma, is transported through the pipe-line facilities of Texoma and Natural to various points of sale in Kansas, Nebraska, Iowa, and Illinois where such gas is sold to distributing companies for resale for ultimate public consumption. Some sales are made by Natural to industrial consumers direct from its gas transmission system but the total of such sales is small compared to sales for resale.

Natural and Texoma are each a "natural-gas company" within the meaning of that term as defined in the Natural Gas Act and are engaged in the transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale, pursuant to a "grandfather certificate" issued by this Commission.[4]

Applicant, Chicago District is an Illinois corporation engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption in the states of Illinois and Indiana by means of two transmission pipe lines beginning at the point of connection with Natural approximately 2 miles west of the city of Joliet, Illinois. One of such pipe lines, approximately 41 miles in length and known as the Calumet line, extends eastwardly through Chicago Heights, Illinois, and thence northerly to connections with the gas mains of The Peoples Gas Light and Coke Company at the city limits of the city of Chicago. Northern Indiana Public Service Company is served from this line by a tap extending to the Illinois-Indiana state line. A part of the gas requirements of Public Service Company of Northern Illinois are also supplied from this line. The second pipe line, known as the Crawford line, extends northeasterly approximately 34 miles generally along the north bank of the drainage canal of the Sanitary District of Chicago to a connection with the gas main of The Peoples Gas Light and Coke Company at the western city limits of the city of Chicago. A part of the gas requirements of Public Service Company of Northern Illinois and all the general service requirements of Western United Gas and Electric Company are also supplied from the Crawford line.

By means of such facilities Chicago District transports natural gas produced in Texas and purchased by it from Natural to points of connection with gas distributing companies in the Chicago area and surrounding territory in Illinois as well as northern Indiana and is a "natural-gas company" within the meaning of that term as used in the Natural Gas Act.[5]

Present and Future Requirements of Natural

[2] The record shows that peak day firm system requirements of Natural on December 20, 1945 (the all-time firm peak day requirements of Natural) was 255,111 thousand cubic feet. The firm peak day requirements for the winter season of 1946–1947 (stated as at January 1, 1947) is estimated at 314,430 thousand cubic feet. Of this total, 301,679 thousand cubic feet is the estimated require-

[4] Docket No. G–235. See also (1940) Docket Nos. G–109 and G–112, 2 FPC 218, 223, 35 PUR(NS) 41, affirmed (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

[5] Docket No. G–289.

ments in the market areas now served by Natural, and 12,751 thousand cubic feet represents the estimated requirements in the new market areas which Natural proposes to serve. The estimated firm peak day requirements for the winter season of 1947–1948 (stated as at January 1, 1948) totals 355,510 thousand cubic feet. Of that total 338,391 thousand cubic feet represents firm requirements in the market areas now served and 17,119 thousand cubic feet represents firm requirements in the market areas which Natural seeks authority to serve.

The tabulation below shows actual firm natural gas deliveries by Natural on December 20, 1945, to each distributing utility which presently takes its natural gas supply from Natural, estimated requirements for each as of January 1, 1947, and January 1, 1948, and the firm requirements of main line industrials. The tabulation also shows estimated firm peak day requirements of distributing utilities in new areas which Natural proposes to serve.

	M Cu. Ft. of 1,000 BTU Gas		
Present Markets	12–20–45 (Actual)	1–1–47 (Estimated)	1–1–48 (Estimated)
Chicago District Pipeline Company	218,161	257,660	289,340
Iowa Illinois Gas and Electric Co.	24,391	31,500	36,000
Central States Electric Co.	2,342	1,635	1,635
Iowa Power & Light Company	2,197	1,980	1,980
City of Nebraska City	894	880	880
Illinois Power Company	557	525	525
United Gas Service Company	191	145	145
Princeton Gas Service Co.	128	100	100
Illinois Northern Utilities Co.	1,966	2,174	2,586
Central Illinois Electric and Gas Co.	1,951	2,215	2,215
Kewanee Public Service Co.	477	625	625
Wisconsin Southern Gas Co.[6]	—	400	520
Main Line Industrials	1,856	1,840	1,840
Total for existing markets	255,111	301,679	338,391

	M Cu. Ft. of 1,000 BTU Gas		
Proposed New Markets	12–20–45 (Actual)	1–1–47 (Estimated)	1–1–48 (Estimated)
North Shore Gas Company	—	7,590	10,580
Central Illinois Electric & Gas Co. (Rockford, Illinois)	—	4,895	6,075
Illinois Northern Utilities Co. (Mendota, Illinois)	—	71	189
Central States Electric Co. (Creston, Iowa)	—	100	140
Iowa Southern Utilities Co. (Washington, Iowa)	—	95	135
Total for new markets	—	12,751	17,119
Total Requirements of Natural	255,111	314,430	355,510

The important increases in Natural's firm requirements (increases over December 20, 1945) are reflected in estimates of (1) Chicago District Pipeline Company, (2) Iowa Illinois Gas and Electric Company, and (3) demands in the new market areas which applicants propose to serve. These increased requirements are:

[6] Service authorized in Docket Nos. G–236 and G–536, *supra*, but the pipe line to serve this utility is not yet completed in so far as certain railroad crossings are concerned.

	1–1–47	1–1–48
Chicago District Pipeline Company	39,499	71,179
Iowa Illinois Gas and Electric Company	7,109	11,609
Proposed new markets	12,751	17,119
Increase over December 20, 1945	59,359	99,907

The 1947 and 1948 estimates for six of the gas distributing companies now supplied by Natural, and for main line industrials, are less than demands realized on December 20, 1945.[7] The record shows that these estimates were based on peak day demands established prior to December 20, 1945, and that requirements in such areas for 1947 and 1948 are expected to exceed actual demands realized on December 20, 1945. Four of the utilities listed show small increases.[8] These increases are due entirely to increases on account of general domestic service and residential space heating.

Natural's present pipe-line capacity is 279,000 thousand cubic feet on a 1,000 BTU basis. On December 20, 1945, actual firm requirements were 255,111 thousand cubic feet. Spare pipe-line capacity on that date was, therefore, 23,889 thousand cubic feet. For the peak day of the 1946-1947 season Natural's estimated firm requirements exceed present pipe-line capacity by approximately 35,500 thousand cubic feet and for the 1947-1948 season by approximately 76,000 thousand cubic feet. It is apparent, therefore, that if estimated future firm requirements in the areas now served by Natural are realized and expected demands in new market areas are to be supplied, Natural must provide additional pipe-line capacity.

Chicago District's Peak Day Requirements

All natural gas purchased by Chicago District (less company use and unaccounted for gas) is sold to four gas distributing utilities which supply the Chicago metropolitan area, including the northern Indiana area adjacent to the Illinois-Indiana state line. The natural gas requirements of these distributing companies (actual for December 20, 1945, and estimated by the distributing companies for January 1, 1947, and January 1, 1948) are shown by the following statement:

[7]	12–20–45 (Actual)	1–1–47 (Estimated)	1–1–48 (Estimated)
Central States Electric Company	2,342	1,635	1,635
Iowa Power & Light Company	2,197	1,980	1,980
City of Nebraska City	894	880	880
Illinois Power Company	557	525	525
United Gas Service Company	191	145	145
Princeton Gas Service Company	128	100	100
Main Line Industrials	1,856	1,840	1,840
Total	8,165	7,105	7,105

[8]	12–20–45 (Actual)	1–1–47 (Estimated)	1–1–48 (Estimated)
Illinois Northern Utilities	1,966	2,174	2,586
Central Illinois Electric & Gas Co.	1,951	2,215	2,215
Kewanee Public Service Co.	477	625	625
Wisconsin Southern Gas Co.	—	400	520
Total	4,394	5,414	5,946

Distributing Utility	M Cu. Ft. of 1,000 BTU Natural Gas 12-20-45 (Actual)	1-1-47 (Estimated)	1-1-48 (Estimated)
Peoples Gas Light and Coke Company	162,377	165,720	168,240
Public Service Company of Northern Illinois	22,860	47,540[9]	69,450[9]
Western United Gas and Electric Company	18,455	24,700	28,850
Northern Indiana Public Service Company	12,343	16,700	19,800
Company use and unaccounted for	2,126	3,000	3,000
Total Requirements—Chicago District[10]	218,161	257,660	289,340

All four utilities distribute manufactured or mixed gas generally. The only exception is Public Service Company of Northern Illinois (Public Service) which, at the present time, distributes straight natural gas in the area around Wedron, Streator, and Ottawa, Illinois, and in the area around Kankakee, Illinois. It is also to be noted that, under the proposal in Docket No. G-664, as amended, Public Service proposes to convert its Northern Division from mixed gas service (800 BTU) to straight natural gas service. Gas for this area will be delivered to Public Service at Volo, Illinois, directly from the facilities of Natural, although the sales transaction involves a sale by Natural to Chicago District which, in turn, sells to Public Service.

The total 1945 peak day firm requirements of the four distributing utilities (mixed gas for send-out to ultimate consumers, natural gas in the areas where Public Service distributes or proposes to distribute natural gas and natural gas requirements for the glass and chemical industry) and estimated peak day firm requirements for the seasons 1946-1947 and 1947-1948 are set forth in the following statement:

	M Cu. Ft. 1,000 BTU Equivalent 1945 (Actual)	1946-1947 (Estimated)	1947-1948 (Estimated)
General Service			
Other than space heating	144,146	144,374	148,916
Space heating	112,085	141,919	172,402
Total general service	256,231	286,293	321,318
Firm Industrial	1,312	1,600	1,700
Glass and Chemical[11]	19,673	33,200	34,300
Total Firm Gas Requirements	277,216	321,093	357,318

Estimated increase in peak day firm gas requirements, 1946-1947 over 1945, is 43,877 thousand cubic feet. Of this total 43,361 thousand cubic feet is due to estimated increase in the requirements for space heating and for the glass and chemical industries. Likewise, the estimated increase in

[9] Includes 10,150 thousand cubic feet on January 1, 1947, and 30,100 thousand cubic feet on January 1, 1948, to be delivered at Volo, Illinois.

[10] The figures in this tabulation represent the total volumes of natural gas purchased by Chicago District from Natural on a firm basis, and include some natural gas sold by Chicago District on an interruptible basis for resale by distributing companies on an interruptible basis to glass and chemical industries. See footnote 11.

[11] Volume of straight natural gas purchased by Chicago District on a firm basis but sold by Chicago District and distributing utilities on an interruptible basis.

peak day firm requirements for 1947-1948 over 1946-1947 is 36,225 thousand cubic feet, of which 31,583 thousand cubic feet is for space heating and for glass and chemical industries.

Space heating requirements, divided between residential, commercial, and industrial, are shown to be as follows:

	1945 (M Cu. Ft.)	1946-1947 (M Cu. Ft.)	1947-1948 (M Cu. Ft.)
Space Heating			
Residential [12]	88,708	115,760	144,228
Commercial [12]	19,752	21,814	23,556
Industrial	3,625	4,345	4,618
Total	112,085	141,919	172,402

Witnesses on behalf of each of the three Illinois utilities distributing gas in the Chicago metropolitan area, testified that estimated increases in peak day firm requirements for residential heating were based on surveys which indicated that approximately one-half of all new homes would be heated by gas, and that 50 per cent of such estimated increase represented space heating in new homes, while the other 50 per cent represented conversion from other types of fuel. Testimony relating to space heating in the Northern Indiana territory showed that approximately 20 per cent of new homes would be heated by gas. Estimates of space heating demands for the current year, which were made at the time applications were filed (G-651 and G-664), were exceeded on the peak day of December 20, 1945, and it is not unlikely that estimates for the 1946-1947 and 1947-1948 seasons will also be exceeded.

Glass and Chemical Industries — Estimate of Future Requirements

Estimated future requirements of the glass and chemical industries present a problem. The record does not show just what particular need is relied upon to justify the estimated increase in firm future requirements.

The estimated increase in peak day firm demands of Chicago District for the years 1947 and 1948, over December 20, 1945, for glass and chemical industries total 13,527 thousand cubic feet and 14,567 thousand cubic feet respectively. The following statement shows the extent to which facilities of Chicago District are utilized for this type of service and the distributing utilities which sell to the glass and chemical industries served:

Utility	Delivery	12-20-45 (Actual)	1947 (Estimated)	1948 (Estimated)
Public Service	Calumet Line	2,517	8,200	8,380
Western United	Calumet Line	414	700	850
Public Service	Crawford Line	2,530	2,300	2,500
Public Service	Wedron Tap	14,212	22,000	22,570
Total		19,673	33,200	34,300

This tabulation shows that the principal requirement for the glass and chemical industries is via the Wedron Tap located west of Joliet, Illinois.

[12] Space heating peak day requirements for Northern Indiana Public Service Company allocated between residential and commercial consumption on the basis of annual sales ratios.

The Wedron Tap is a direct connection between the facilities of Natural and Public Service. However, Natural sells this gas to Chicago District and Chicago District, in turn, makes the sale to Public Service. Gas requirements imposed at the Wedron Tap have no bearing on the requirements of Chicago District for increased facilities since such deliveries are made directly by Natural west of Joliet, Illinois, and no facilities of Chicago District are involved. The reasonableness of such future requirements, however, does bear upon Natural's estimate of future requirements.

Exhibits submitted show that natural gas for this type of service is purchased by Chicago District from Natural on a firm basis. However, Chicago District's sales to Public Service and Western United, as well as sales by such distributing companies to glass and chemical industries are on an interruptible basis.[13]

Estimated future requirements for glass and chemical industries were arrived at after consultation between representatives of the distributing utilities and the glass and chemical industry. It is to be noted that no representatives of the glass and chemical industries appeared at the hearing to support their estimate of future requirements. Furthermore, upon cross-examination of the witness who appeared on behalf of Public Service to support estimates submitted by that company, it was developed that "Prospective Customer No. 1," a supposedly new customer which was expected would require 5,500 thousand cubic feet on the 1947 peak day and 5,540 thousand cubic feet on the 1948 peak day probably will not materialize. To this extent, estimated requirements for glass and chemical industries are overstated. The maximum of estimated future requirements for glass and chemical industries which can be justified by the record is as follows:

	Dec. 20, 1945	Estimated Jan. 1, 1946	Jan. 1, 1948
Western United	414	700	850
Public Service	19,259	27,000	27,910
Total	19,673	27,700	28,760

The total stated above for Public Service results from the elimination of estimated requirements for "Prospective Customer No. 1" shown by Public Service at 5,500 thousand cubic feet for 1947 and 5,540 thousand cubic feet for 1948. The record does not show that gas to provide firm service on the part of Natural is necessary when Chicago District supplies such gas to the distributing companies on an interruptible basis. However, the additional capacity which we are asked to authorize in these dockets (G-651 and G-664) will probably not be adequate beyond 1948; and when future requests are made by Natural or Chicago District for increase in pipe-line capacity, the Commission can then take whatever steps may be required if continued service practices in this regard are not justified.

Iowa Illinois Gas and Electric Company Increase in Peak Day Firm Requirements

Iowa Illinois Gas and Electric Company distributes natural gas in Moline and Rock Island, Illinois, and Daven-

[13] Chicago District RD-1 rate schedule provides that sales to Public Service and Western United may be made on a firm basis, upon election of such utilities, six months after the War.

port, Iowa. Its entire requirements are supplied by Natural. Estimated increases in peak day firm requirements of 7,109 thousand cubic feet for 1946-1947 and 11,609 thousand cubic feet for 1947-1948 (as compared with total requirements on December 20, 1945) are due to estimated increases in residential space heating requirements which the utility must supply.

New Market Peak Day Firm Requirements

Estimated peak day firm requirements in the new markets which Natural proposes to serve, by class of service in each new market area, are shown by the following statement:

	M Cu. Ft. of 1,000 BTU Gas	
	1947 (Estimated)	1948
North Shore Gas Company		
Residential	1,460	1,540
Residential Space Heating	4,100	6,000
Commercial	670	880
Industrial	760	1,570
Miscellaneous	40	40
Unaccounted for	560	550
Total	7,590	10,580
Rockford, Illinois (Central Illinois Electric and Gas Company)[14]		
Residential, Residential Space Heating	3,615	4,565
Commercial	570	600
Industrial	450	650
Miscellaneous	70	70
Unaccounted for and company use	190	190
Total	4,895	6,075
Mendota, Illinois (Illinois Northern Utilities Company)		
Residential (Including space heating)	46	64
Commercial	13	15
Industrial	12	110
Total	71	189
Creston, Iowa (Central States Electric Company)[15]	100	140
Washington, Iowa (Iowa Southern Utilities Company)[15]	95	135

Natural seeks authority (1) to sell natural gas to meet the full gas distribution requirements of North Shore, and (2) to construct approximately 8 miles of 8-inch line from the vicinity of Volo, Illinois, to a point near Grays Lake, Illinois, where connection will be made with distribution lines of North Shore. These facilities will be owned and operated by Natural and the cost of construction is estimated at $166,759. The entire cost of making the change-over in consumers' existing gas equipment will be borne by North Shore.

North Shore Gas Company distributes manufactured gas of approximately 565 BTU content in 25 or more towns and communities northwest of the metropolitan area of Chicago, including Waukegan, Highland Park, Winnetka, North Chicago, Lake Forest, and Glencoe. The present manufactured gas facilities supplying this area must be replaced if natural gas service is not provided. The construction of such new facilities would increase the cost of gas and impose materially higher rates upon consumers in the area. If natural gas service is made available, as proposed by Natural, North Shore will be in a position to supply straight natural gas at rates which will be approximately 14 per cent lower than the rates now charged. Evidence in this regard further shows that $700,000 in investment will be required for new plant capacity and $200,000 for deferred maintenance plus additional sums to

[14] Natural gas requirements shown do not include requirements in area now served with natural gas.

[15] Load primarily residential with some commercial use.

increase distribution main capacity if the area is to be supplied with manufactured gas. North Shore states that if these expenditures were made an increase in rates would be necessary.

More than 75 per cent of the estimated requirements of North Shore is for general domestic use and for residential space heating. With the construction which Natural proposes, an adequate supply of natural gas will be available and the advantages to consumers in the area served by North Shore fully justify the extension of facilities and service proposed by Natural.

Rockford, Illinois. Under temporary authority issued by this Commission on April 17, 1942, Natural was authorized to deliver natural gas to Central Illinois Electric and Gas Company to supply industrial requirements in Rockford, Illinois. War necessities prompted this action. Natural now seeks authority to supply the full requirements of Central Illinois Electric and Gas Company in the Rockford, Pecatonica and Freeport area. The new area to be served is largely residential. The record shows that the manufactured gas facilities, upon which these towns depend for their supply, are nearing the end of their serviceability and are now used to capacity. Without new additions these facilities will not be adequate to meet firm requirements in the future. The necessities of the situation, as far as Rockford, Pecatonica and Freeport are concerned, are not as aggravated as that which confronts North Shore Gas Company. However, all facilities are now installed to enable Natural to provide natural gas to the gas distributing company for service to Rockford and the surrounding area.

If natural gas is supplied by Natural, Central Illinois Electric and Gas Company proposes to reduce its consumer rates. Company officials estimate that saving will amount to $180,000 a year or a reduction of approximately 10 per cent. Under the circumstances, natural gas service to consumers in Rockford, Pecatonica, and Freeport is essential in the public interest.

Mendota, Illinois. Natural proposes to sell natural gas to Illinois Northern Utilities Company for distribution in Mendota, Illinois. Peak day requirements are estimated at 71 thousand cubic feet on January 1, 1947, and 189 thousand cubic feet on January 1, 1948. Service to Mendota will be provided from the main transmission line of Natural by the construction of 10 miles of 2-inch line at an estimated cost of $63,040. The quantity of gas required to serve this community will not affect Natural's ability to serve other markets.

At the present time Mendota is supplied with manufactured gas and if natural gas is made available the reduced cost of gas to the distributing company will be passed on to the consumers. The estimated reduction in rates will amount to approximately 29 per cent.

The manufactured gas facilities which supply the area are in poor condition and are otherwise inadequate. Unless natural gas is made available new manufactured gas facilities or extraordinary repairs will be required at substantial cost. These facts and circumstances justify the extension of natural gas service to Mendota, Illinois, in the public interest.

Washington and Creston, Iowa

Natural in Docket No. G-651 and Michigan-Wisconsin Pipe Line Company in Docket No. G-669 both propose to serve these two Iowa towns with natural gas.

Washington, Iowa, with a population of 5,227, is presently served with manufactured gas distributed by The Iowa Southern Utilities Company. This company has requested a supply of natural gas from Natural in order that it may convert its system in Washington to straight natural gas service. It estimates that, if natural gas is made available from Natural, ultimate consumers presently served in Washington will benefit by an average rate reduction of not less than 25 per cent. Consumption of gas in this town is primarily residential, with only small quantities required for commercial establishments. Present manufactured gas production facilities are in poor condition, and required replacements are being deferred pending the outcome of Natural's application in the instant proceedings.

Creston, Iowa, with a population of 8,033 is now served with manufactured gas distributed by the Central States Electric Company. This company has made formal application to Natural for a supply of natural gas in order that it may convert its system in Creston to straight natural gas service. The town council of Creston, by formal resolution, has requested Central States Electric to take necessary steps to secure a supply of natural gas for Creston from Natural. Central States Electric now purchases natural gas from Natural for distribution in the towns of Muscatine, Knoxville, Pella, and Greenfield, Iowa. If natural gas is made available to it by Natural for distribution in Creston, Central States Electric Company proposes to apply in Creston the schedule of rates in effect in the above-named towns, and estimates that the resultant annual savings to the average domestic customer in Creston under such rate schedule will be approximately 25 to 30 per cent. According to its chief engineer, Central States Electric's present manufactured gas production plant in Creston is in such condition that it must be replaced with a butane-propane plant if natural gas is not available in the relatively near future. Consumption of gas at Creston, as in Washington, is primarily residential.

The combined volumes of gas required to serve Washington and Creston are relatively small as compared with the capacity of Natural's system and the proposed Michigan-Wisconsin system. Revenues which will be derived from such sales are also relatively small.[16]

[16] As estimated by Natural, the annual and peak day sales of natural gas to Creston and Washington during 1947 and 1948 and the revenues to be received by Natural for such sales are as follows:

1947

	Peak Day M cu. ft.	Annual M cu. ft.	Revenues
Washington	95	21,200	$2,953.04
Creston	100	22,000	3,062.40
Total	195	43,200	$6,015.44

1948

	Peak Day M cu. ft.	Annual M cu. ft.	Revenues
Washington	135	25,200	$3,867.84
Creston	140	26,000	3,611.40
Total	275	51,200	$7,479.24

In Docket No. G-669, Michigan-Wisconsin estimated its annual sales at Washington and Creston during the first year of operation (1948) would be 32,270 thousand cubic feet and 39,728 thousand cubic feet respectively.

Michigan-Wisconsin, through its counsel, has stated that it does not make an issue of serving these two towns. Also, the Michigan-Wisconsin system is in the formative stage and in any event could not contemplate starting deliveries of gas until January 1, 1948, at the earliest. Therefore, since service by Natural will be available shortly after issuance of a certificate by the Commission in these proceedings, and since a comparison of estimates submitted by Natural in Docket No. G-651 and by Michigan-Wisconsin in Docket No. G-669 show that the cost of gas to such towns if purchased from Natural will be less than if purchased from Michigan-Wisconsin, if such operation were authorized by the Commission, at least through the first five years after natural gas were made available we find that public convenience and necessity require that we now authorize Natural to serve these communities. This determination, however, shall not be taken as a decision by the Commission upon any other issue which may arise by reason of the application by Michigan-Wisconsin for authority to supply natural gas in towns and areas now served by Natural.

Natural's Requirements for Increased Pipe Line Capacity

It is apparent that Natural does not now have sufficient pipe-line capacity to supply firm peak day demands for the coming winter. The added facilities which Natural and Texoma propose are reasonably designed to provide increased pipe-line capacity of 85,000 thousand cubic feet per day. It appears likely that firm peak day demands during the winter seasons of 1946–1947 and 1947–1948 will be somewhat higher than estimated. The record shows that requirements on December 20, 1945, exceeded estimates. The extent to which Natural's present pipe-line capacity is inadequate to meet future estimated firm requirements is shown by the following statement:

M Cu. Ft. 1,000 BTU Gas	1946–1947	1947–1948
Estimated firm peak day requirements	314,430	355,510
Present installed capacity	279,000	279,000
Deficit	(35,430)	(76,510)
Proposed capacity to be added	85,000	85,000
Spare pipe-line capacity	49,570	8,490

Thus it appears that by January 1, 1948, Natural can expect firm peak demands substantially equal to installed pipe-line capacity even with the added facilities for which application is made in this proceeding. Charged, as this Commission is, with an obligation to issue certificates of public convenience and necessity where the facts and circumstances justify such action, it would appear that the showing as to future needs of communities dependent upon Natural for their gas supply, leads to the conclusion that the proposed increase in Natural's pipe-line facilities has been justified and public interest requires that a certificate of public convenience and necessity issue.

Natural's Proposed Pipe-line Extension to Volo and Grays Lake, Illinois

Natural proposes, under its application in this case, to build a 16-inch lateral line extending from its 20-inch

Estimated revenues to be derived from such sales were $7,654 at Washington and $9,865.60 at Creston.

line in the vicinity of Greenwood, Illinois, to Volo, Illinois, a distance of approximately 18¼ miles with a further 8-mile extension of 8-inch line to the vicinity of Grays Lake, Illinois. The Northern Division of Public Service will be served by a direct connection at Volo and the distribution facilities of North Shore will be connected with the eastern terminus of the 8-inch line in the vicinity of Grays Lake. These lines will have adequate capacity to serve the requirements of the Northern Division of Public Service and North Shore.

The cost of the 16-inch line to Volo, with necessary metering and regulating facilities, is estimated at $788,227. The 8-inch extension, including metering and regulating facilities, is estimated to cost $166,759.

The Commission finds that the construction which Natural proposes is reasonably designed to provide required service to the Northern Division of Public Service and to North Shore and is desirable in the public interest. Added pipe-line capacity by Natural under its application in this case provides adequate facilities to supply natural gas requirements which will be attached at Volo and Grays Lake.

Financing of Proposed Facilities by Texoma and Natural

[3] The proposed facilities are to be financed by a bank loan of $17,500,000 at 1¾ per cent, maturing January 1, 1954, of Natural Gas Pipeline Company of America, the cost above the amount of the bank loan to be met out of current funds. The record shows that Natural will have available funds out of which to meet such additional cost.[17] Of the estimated cost of $19,231,076 of the proposed facilities, Natural's share is $16,721,723 and Texoma's $2,509,352.

Texoma proposes to finance the cost of its proposed additions by the issuance of 6 per cent bonds to its affiliate, Natural Gas Pipeline Company of America. The bonds in turn are to be pledged by Natural under its existing mortgage indenture. The rate of 6 per cent appears on its face to be completely out of line with conditions prevailing in today's money market, but upon analysis we find that the loan in question is an interdepartmental transaction which is not inimical to the public interest, and accordingly we will not qualify our approval of the application by reason of the apparently high interest rate.

As stated above, Texoma is an affiliate of Natural Gas Pipeline Company of America. It is operated as a department thereof. Under contractual arrangements, Natural pays Texoma for gas supplied by the latter only sufficient amounts to enable Texoma to take care of its cash obligations, including the retirement of bonds. These intercompany arrangements were such that the Commission treated Texoma and Natural as one for the purpose of determining just and reasonable rates (In Re Natural Gas Pipeline Co. of America and Texoma Nat. Gas Co. [1940] 2 FPC 218, 35 PUR(NS) 41). The intercompany transactions, in other words, were eliminated and the properties of the two companies treated as a unit for purposes of the rate proceeding. The

[17] Natural has recently completed a plan of refinancing under which common stock was increased to $20,000,000 and bonds were decreased to $25,000,000.

Commission determination was affirmed by the Supreme Court of the United States.[18]

Texoma has been financed almost exclusively by the issuance of bonds to its affiliate, Natural Gas Pipeline Company of America. At the end of 1945 it had outstanding 6 per cent bonds in the amount of $13,050,000, all of which were owned by Natural and pledged under the latter's indenture. Its capital stock consisted of the nominal amount of $500,000.

The only outside actual new financing related to this proceeding is by Natural. The interest rate on such financing appears to be in keeping with current interest costs.

Accordingly, while we would not approve a capital structure consisting almost exclusively of debt securities bearing interest at the abnormally high interest rate of 6 per cent, for the reasons stated above, we do not believe the public will be adversely affected by the proposed financing and we will, therefore, not withhold approval of the application on that account.

Gas Reserves

Under existing contracts Natural purchases 25 per cent of its gas requirements from Colorado Interstate Gas Company, which gas is supplied by Canadian River Gas Company, and the remaining 75 per cent from Texoma Natural Gas Company. As of January 1, 1945, the estimated recoverable gas reserves of Texoma in the Panhandle Field of Texas (on the basis of assumed 50 pounds abandonment pressure and stated at a 14.65 pound pressure base) were 2,040,000,000 thousand cubic feet, all of which are dedicated to Natural. Assuming that the production in future years would equal 1945 production, namely 81,212,500 thousand cubic feet (222,500 thousand cubic feet daily) Texoma's recoverable reserves in the Panhandle Field would not be exhausted until the early part of 1970. However, annual production must be stepped up to 105,850,000 thousand cubic feet (290,000 thousand cubic feet daily) if Texoma is to supply 75 per cent of the increased requirements necessary to meet Natural's obligations for increased deliveries contemplated under its application in this case (Docket No. G-651). Such withdrawals would exhaust Texoma's recoverable reserves in the Panhandle Field during the early part of 1964.

Although the reserves of Texoma are thus adequate to meet such requirements until some time during 1964 according to the studies and estimates submitted, well deliverability studies made by Texoma indicate that Texoma's present acreage when fully drilled (one well to each 640 acres) will not maintain beyond 1960 the increased daily withdrawals contemplated from such acreage in Docket No. G-651. The manager of production for Texoma, however, stated that such studies were based upon a general assumption that acidization would increase well deliverability by 75 per cent above production prior to acidization, whereas tests made of individual wells over a period of years indicated that well deliverability was increased materially above 75 per cent through acidization. He further insisted that a study of the performance curves of

[18] Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

each well in the reserve area held by Texoma indicated to him, and it was his judgment, that the contemplated increased daily withdrawals from Texoma acreage could be maintained for a substantial period beyond 1960.

Canadian River, in addition to supplying 25 per cent of the requirements of Natural, also supplies gas to the Amarillo Oil Company and the Colorado Interstate Gas Company. As of January 1, 1945, the estimated recoverable gas reserves of Canadian River in the Panhandle Field (on the basis of an assumed 50 pounds abandonment pressure and stated at a 14.65 pound pressure base) were 2,420,000,000 thousand cubic feet, according to applicants' testimony in these proceedings. Assuming an annual production in future years equal to that produced in 1945 (67,890,000 thousand cubic feet), Canadian River's recoverable reserves in the Panhandle Field would be exhausted in the latter part of 1980. It it is assumed, however, that annual production in future years from Canadian's acreage will be increased to 75,920,000 thousand cubic feet, to reflect the supplying of 25 per cent of the proposed increased requirements of Natural in this case (Docket No. G–651), Canadian River's recoverable reserves in the Panhandle Field would be exhausted in the latter part of 1978. The latter estimate of the life of Canadian's recoverable gas reserves in the Panhandle Field is based upon the assumption by Natural that the annual requirements of Amarillo Oil Company and Colorado Interstate Gas Company for gas from Canadian in future years will not be greatly in excess of their 1945 requirements. This is due to the fact that it is anticipated that increases in their requirements for residential and commercial gas would be off-set by reductions in wartime requirements of industrial consumers supplied through the facilities of Colorado Interstate, particularly Colorado Fuel and Iron Company.

From the evidence of record in this case it therefore appears that Canadian River has ample reserves and potential deliverability to supply its contractual 25 per cent of the requirements of Natural including the increases contemplated in this proceeding (Docket No. G-651) well beyond twenty years in the future. But it also appears that while Texoma has reserves which are adequate to fulfill its obligation to supply 75 per cent of Natural's increased annual and daily requirements into 1950, there are clear indications that it may not be able after 1960 to provide the daily quantities of gas which are necessary to supply 75 per cent of Natural's increased requirements. While it is claimed that the deliverability of Texoma's wells will be increased by acidization to a point where its recoverable reserves may be made available to Natural in sufficient daily quantities to enable Natural to meet the firm peak day requirements contemplated by it in this docket beyond 1960, it is plainly evident that a more assured supply of natural gas will be required by Natural to meet firm requirements in excess of those presently contemplated. In this connection it is noted that in its application in Docket No. G-231, since withdrawn, wherein an additional 79,000 thousand cubic feet of gas daily was to be supplied by Natural to new markets not now being served or proposed to

be served in this proceeding (Docket No. G-651), it was proposed by Natural that 25 per cent of such increased deliveries would be supplied from Canadian's acreage, the remaining 75 per cent to be supplied from new sources of supply. Significantly, it was not proposed in that docket (Docket No. G-231) that any portion of such increased deliveries would be supplied from Texoma's present acreage in the Panhandle Field. It is therefore obvious that Natural is aware of the indicated deficiency in deliverability of Texoma's reserves.

Chicago District's Requirements for Increased Pipe Line Capacity

The facilities which Chicago District proposes to construct, by partial looping of its Crawford line, will increase the capacity of that line from approximately 145,600 thousand cubic feet per day to 228,800 thousand cubic feet per day. This estimate of capacity is based upon the maintenance of 300 pounds pressure at Natural's Joliet metering station [19] and a minimum of 129 pounds delivery pressure at Peoples' Crawford station.

In addition to the Crawford station, Peoples owns and operates four other plants, North Station, Division Street station, South station, and Twenty-second Street station, designed to produce 800 BTU carbureted water gas as well as 550 BTU carbureted water gas for mixing with straight natural gas to provide 800 BTU mixed gas. Peoples not only produces 800 BTU gas to supply the city of Chicago but also the principal gas requirements of Public Service in the adjacent suburban area around Chicago. The lines of the two companies are interconnected at numerous points south, west and north of the city. The only manufactured gas production plant owned by Public Service is its Skokie plant west of Evanston, Illinois. This plant is a high cost production plant and is only operated during times of peak day requirements.

The five gas producing plants of Peoples are interconnected by what is known as the "Crosstown Main" which is a 30–24-inch line constructed in 1944 and 1945 to provide an adequate supply of natural gas at each of the five plants for mixing with approximately 550 BTU coke oven gas, water gas or reformed gas to produce 800 BTU gas for distribution. Approximately 105,000 thousand cubic feet of natural gas per day is required at the Crawford station alone when that station is operated at full capacity in the production of 800 BTU mixed or reformed gas. The capacity of the "Crosstown Main" from Crawford station to the other four plants is approximately 109,000 thousand cubic feet. If all five stations are to be operated at full capacity in the production of 800 BTU gas, 214,000 thousand cubic feet of natural gas per day must be transported through the Crawford line.

Deliveries by Natural to Chicago District on December 20, 1945 (the day of Natural's all-time peak requirements for firm deliveries) was 218,161 thousand cubic feet, of which 146,821 thousand cubic feet was sold by Chicago District from its Crawford line, 55,248 thousand cubic feet from its Calumet line and 16,092 thousand cubic feet via the Wedron Tap. It is estimated that peak day firm require-

[19] As provided by contract between Natural and Chicago District.

ments of Chicago District will be 257,660 thousand cubic feet during the winter season of 1946–1947 and 289,340 thousand cubic feet during the 1947–1948 season.[20]

In addition to the five gas producing plants of Peoples served from the Crawford line, Peoples owns and operates a gas mixing plant served from the Calumet line and known as the Calumet station. Natural gas received at the Calumet station from the Calumet line is mixed with coke oven gas purchased from steel mills in the vicinity. There is no equipment at this station for the production of gas and there are no facilities by which gas can be transported from other producing stations of Peoples for mixing with natural gas at the Calumet station. For this reason the Calumet station is entirely dependent upon the availability of coke oven gas from the steel mills. Coke oven gas from the Interlake Iron plant has gradually decreased during the war years due to the deterioration of its coke oven plant. On December 17, 1945, a peak day during the 1945–1946 winter season, only 5,712,000 cubic feet of coke oven gas was delivered under Peoples contract with Interlake which calls for the delivery of 21,000,000 cubic feet per day. Effort has been made by Interlake to augment its supply by purchase of coke oven gas from Republic Steel Corporation but the plant operated by Republic Steel is owned by Defense Plant Corporation and its future operation is uncertain. Twenty-one million cubic feet of coke oven gas, when mixed with 26,000,000 cubic feet of natural gas provides 47,000,000 cubic feet of 800 BTU mixed gas which must be provided from Peoples five manufactured gas producing plants if Interlake fails to make delivery.

The increased facilities which Chicago District proposes to construct, thus making available an increased supply of gas at its Crawford plant and through the "Crosstown Main" to Peoples other gas producing plants, would assure an adequate supply of natural gas to the Chicago area as well as the area in which Public Service distributes 800 BTU gas. With increased capacity in the Crawford line the gas supply for the Chicago metropolitan area will be protected even though there should be a failure of the Calumet line. The looping of the Crawford line also provides additional safeguards against line failure and an opportunity for necessary maintenance and repair.

At the present time the Crawford line is operated to the limit of its capacity and increased facilities are required if Chicago District is to provide an adequate supply of natural gas to Peoples for its own use and the requirements of Public Service.

[20] Actual peak day firm requirements of Chicago District, showing total deliveries by lines, on December 20, 1945, and estimated peak day requirements for the future are as follows:

	Dec. 20, 1945 (M Cu. Ft.)	1946–1947 (M Cu. Ft.)	1947–1948 (M Cu. Ft.)
Crawford Line .	146,821	160,210	179,720
Calumet Line ..	55,248	63,100	54,120
Wedron Tap ..	16,092	24,200	25,400
Volo deliveries .	—	10,150	30,100
Total	218,161	257,660	289,340

Deliveries at Volo Station

Chicago District in its amended application seeks authority to sell natural gas to Public Service at Volo for distribution in its Northern Division. Although the Skokie plant of Public Service is located in this area, the requirements of Public Service generally throughout the area, except on peak days, has been supplied by Peoples. The Skokie plant is to be altered to produce 1,000 BTU gas and will be operated only during times of peak demand and in cases of emergency.

Natural will not be in a position to deliver natural gas at Volo sufficiently early in 1946 to permit Public Service to effect a complete change-over to natural gas prior to the winter season of 1946–1947. It is planned, therefore, to convert approximately one-third of the Northern Division to natural gas service during the present year and make conversion of the other two-thirds of the area during the spring of 1947. Peak day deliveries through Volo will be approximately 10,150 thousand cubic feet in the 1946–1947 winter and 30,100 thousand cubic feet when conversion is completed. The balance of the requirements in Public Service's Northern Division, prior to full conversion, must be supplied with 800 BTU gas produced in the five gas producing plants of Peoples.

It is apparent that the facilities and the sale to Public Service at Volo, which Chicago District proposes, are reasonable and necessary in the public interest in order that adequate and assured service may be rendered in the Chicago area. The Crawford line is now loaded to capacity on peak days, increasing amounts of gas will be required during the winter seasons of 1946–1947 and 1947–1948, and safe operation requires some spare capacity.

Financing of Proposed Facilities by Chicago District

Chicago District proposes to finance the improvements which it seeks authority to construct, by a 20-year 5 per cent loan from its parent, Peoples Gas Light and Coke Company.[21] The rate of interest on the loan appears to be completely out of line with current costs of borrowed money. However, for substantially the same reasons heretofore given in discussing Texoma Natural Gas Company's proposed financing and inasmuch as the public interest is not adversely affected thereby, we will not withhold approval of the application for the certificate by reason of the apparently high interest rate.

Interveners—Mine Workers, National Coal Association, Coal Trade Associations, Coal Handlers, Coal Dealers, Coke Plant Employees, Railroad Brotherhoods, Railroads, and Various Other Labor Organizations

[4] Interveners representing labor, coal, and railroad interests insist that the increased pipe-line capacity which applicants seek authority to install should be denied since the use of such additional capacity in supplying increased volumes of natural gas restricts potential markets for coal. The distributing utilities which purchase gas from Natural and Chicago District provide public utility gas service.

[21] The Illinois Commerce Commission in approving the loan provided that the interest rate was not to exceed 5 per cent.

Reasonable firm requirements must be met by these utilities if the public interest is to be served. This Commission is charged by Congress, under the Natural Gas Act, with the obligation to issue certificates of *public convenience and necessity* for natural gas facilities and service when found to be required in the public interest. The economic impact upon the coal industry, the railroads, and those employed in these industries, constitutes just one of the factors to be taken into account in this determination.

The record shows that the price of coal to the consumer in the Chicago area, during the years 1938 to date, has increased as follows:

Year	Southern Illinois Stoker	Cost of Coal per Ton of 2,000 Lbs. Pocahontas Buckwheat	Pocahontas Lump
1938	$7.10	$8.15	$11.35
1939	6.90	8.45	11.30
1940	7.00	8.45	11.40
1941	7.05	8.40	11.14
1942	7.50	9.30	11.85
1943	7.55	9.30	11.90
1944	8.00	9.80	12.45
1945	8.00	9.90	12.55
Present OPA Ceiling Price	$8.25	$10.20	$12.85

The prices given above represent prices for residential delivery at the curb. Seventy cents per ton, on the average, must be added for delivery from the curb to the customer's premises. The retail price of gas for residential space heating in the Chicago area has not been changed since 1933. Evidence submitted by interveners shows that, on the basis of an 80 per cent relative efficiency for coal (12,500 BTU per lb.) compared to natural gas, approximately 10 tons of coal are required for heating a house which would consume 2,000 therms of gas per year. At 7 cents per therm, the cost of gas would be $140 per heating season. Ten tons of Southern Illinois Stoker coal would cost $89.50 at OPA ceiling price with 70 cents added for storage. A like amount of Pocahontas Buckwheat coal would cost $109 and 10 tons of Pocahontas Lump would cost $135.50. It was testified that coal burned for residential house heating in the Chicago area was largely Pocahontas Lump or an equivalent grade of coal. It is apparent therefore that the cost of gas for house heating does not materially exceed the cost of the better grades of coal.

The record shows that present public demands for gas heating require planning to provide gas for 50 per cent of all new homes with further provisions to supply gas for heating with an increasing number of old homes converted from other forms of fuel.

Conclusion

Upon careful consideration of the entire record, we find (1) that the public convenience and necessity require the construction and operation of the facilities and the rendering of the service described in the applications, as supplemented and amended, and (2) that applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

Therefore, we conclude that an appropriate order should be adopted issuing certificates of public convenience and necessity to applicants in accordance with this opinion.

FEDERAL POWER COMMISSION

Re El Paso Natural Gas Company

Docket No. G-655

Re Southern California Gas Company et al.

Docket No. G-675
Opinion No. 134
May 31, 1946

APPLICATION *for authority to construct natural gas pipe-line facilities; granted.*

Interstate commerce, § 37.1 — Natural gas company — Scope of Natural Gas Act.

1. A company owning and operating an integrated natural gas pipe-line system in several states and transporting and selling natural gas in interstate commerce for resale for ultimate public consumption is a natural gas company within the meaning of the Natural Gas Act, p. 155.

Gas, § 2.1 — Jurisdiction of Federal Power Commission — Pipe-line operation.

2. The construction and operation of interconnected pipe-line facilities for the purpose of transporting and selling natural gas in interstate commerce for resale for ultimate public consumption are subject to the jurisdiction of the Federal Power Commission and the requirements of subsections (c) and (e) of § 7 of the Natural Gas Act, 15 USCA § 717f(c), (e), p. 155.

Certificates of convenience and necessity, § 104 — Natural gas pipe line — Inadequacy of existing gas supply.

3. Authority to construct and operate natural gas pipe lines to transport natural gas from Texas to southern California should be granted where within a short period of time the available local gas supply will be insufficient to meet firm demands upon California companies, where the facilities will be adequate for the purpose of transporting the contracted volume of gas and the estimated capital costs appear reasonable, where the companies involved possess sufficient financial resources for construction and the project can be financed on a reasonable basis, where the companies by means of the project will utilize, as a major source of supply, oil well gas which otherwise would be wasted, and where the project will serve only one market of any consequence in contiguous areas and lacks the conflicting interests generally present in major certificate proceedings, p. 156.

APPEARANCES: Allen R. Grambling, H. K. Hudson, Carl I. Wheat, and Robert E. May, for applicant, El Paso Natural Gas Company; Carl I. Wheat, Robert E. May, LeRoy M. Edwards, and Thomas J. Reynolds, for applicants, Southern California Gas Company and Southern Counties

Gas Company of California; Charles E. McGee, and Milford Springer, for the Federal Power Commission; Roy A. Wehe and William H. Gorman, for the Railroad Commission of the state of California; W. D. MacKay and L. H. Stewart, for Builders Brick Company, Ltd., San Lorenzo Nursery Company, Torrance Brass Foundry and Wright's Green House.

By the COMMISSION:

History of the Proceedings

These are consolidated proceedings under § 7 of the Natural Gas Act, 15 USCA § 717f, involving related applications for certificates of public convenience and necessity authorizing the construction and operation of interconnected, 1,200-mile, $70,000,000 natural gas pipe lines from the Texas Panhandle to Los Angeles, California. The project is designed to meet a developing shortage in the local natural gas supply for consumers in southern California.

El Paso Natural Gas Company (G-655) requests a certificate authorizing the construction and operation of (1) a 24-inch transmission pipe line beginning at a point near Dumas, Texas, and extending southwesterly a distance of 251 miles to El Paso's Eunice Plant near Eunice, New Mexico; (2) a connecting 26-inch transmission pipe line beginning at the Eunice Plant and extending westerly a distance of approximately 737 miles to the border line between Arizona and California, near Blythe, California; (3) five connecting lateral lines in the Permian Basin in New Mexico and Texas; (4) many new compressor stations plus additions to existing compressor stations; (5) three gas purification and dehydration plants, plus one gas dehydration plant; and (6) appurtenant facilities for El Paso's proposed pipe-line system.[1] El

[1] *Facilities which El Paso seeks authority to construct and operate:*

First Stage—125,000 thousand cubic feet per day

(a) 737 miles of 26-inch pipe line from Eunice, Lea county, New Mexico, to the Arizona-California border line near Blythe, California.

(b) 46.6 miles of 14-inch pipe line from Jal, Lea county, New Mexico to a point on the foregoing 26-inch line in Eddy county, New Mexico.

(c) 30.5 miles of 14-inch pipe line from the Fullerton Field, Andrews county, Texas, to the proposed Eunice Compressor station in Lea county, New Mexico.

(d) 18.2 miles of 16-inch pipe line from the TXL-Wheeler Field, Ector county, Texas, to the proposed compressor station located in the Keystone-Ellenberger Field, Winkler county, Texas.

(e) 12.8 miles of 12¾-inch pipe line from the compressor station in (d) above to the proposed Jal Compressor Station in Lea county, New Mexico.

(f) 4 miles of 8⅝-inch pipe line from the proposed Jal Compressor Station to the Rhodes Field in Lea county, New Mexico.

(g) *New Compressor Stations*

Fullerton, Andrews county, Texas, 6—1,000 hp. units.

Keystone, Winkler county, Texas, 3—800 hp. units.

Mainline Station No. 5, Pima county, Arizona, 4—1,000 hp. units.

Additions to Compressor Stations

Eunice-Field, Lea county, New Mexico, 10—1,200 hp. units.

Eunice-Mainline, Lea county, New Mexico, 4—1,000 hp. units.

Jal Station, Lea county, New Mexico, 3—800 hp. units.

(h) *Purification and Dehydration Plants*

Eunice, Lea county, New Mexico, 63,030 M cu. ft. per day.

Fullerton, Andrews county, Texas, 27,780 M cu. ft. per day.

Keystone, Winkler county, Texas, 45,000 M cu. ft. per day.

(i) River crossings, meters, regulators and other appurtenances, including employees' cottages, necessary for the utilization of all facilities described above.

Second Stage—175,000 M cu. ft. per day

(a) 251 miles of 24-inch pipe line from

Paso seeks authorization to transport Texas and New Mexico natural gas in interstate commerce by utilizing these proposed pipe-line facilities, and to sell such gas at the Arizona-California border to Southern California Gas Company and Southern Counties Gas Company for resale to ultimate consumers in California through existing local distribution facilities.

Southern California Gas Company and Southern Counties Gas Company (G-675), as tenants in common having a 75 per cent and 25 per cent interest respectively, filed an application for a certificate authorizing the construction and operation of (1) a 30-inch pipe line connecting with the proposed El Paso pipe line at the Arizona-California boundary line and extending westward for a distance of 214 miles to Santa Fe Springs, California; (2) several lateral lines and connections to deliver gas into the California applicants' existing distribution systems; (3) a 10,000 horsepower compressor station on the proposed main pipe line near Blythe, California; and (4) appurtenant facilities for the California part of the planned 1,200-mile pipe-line system. The California applicants also request authorization to operate an existing 26-inch pipe line about 10 miles long between Santa Fe Springs and Spence Street Station in Los Angeles, which will become an integral part of the proposed Texas-to-California pipe-line system by forming the final segment connecting it with the major distribution systems in Los Angeles.[2] Authorization is sought by the California

Eunice, Lea county, New Mexico, to Dumas, Moore county, Texas.

(b) *New Compressor Stations*

Dumas Station, Moore County, Texas, 5—1,000 hp. units.

Mainline Station No. 2, El Paso county, Texas, 6—1,000 hp. units.

Additions to Compressor Stations

Eunice-Mainline, Lea county, New Mexico, 1—1,000 hp. unit.

Mainline Station No. 5, Pima county, Arizona, 2—1,000 hp. units.

(c) A dehydration plant at Dumas, Moore county, Texas, with capacity of 55,000 M cu. ft. per day.

(d) Canadian River crossing, meters, regulators and other appurtenances, including employees' cottages, necessary for the utilization of all the facilities described above for the second stage.

Third Stage—305,000 M cu. ft.

(a) *New Compressor Stations*

Slaughter Station, Hockley county, Texas, 9—1,000 hp. units.

Mainline Station No. 1, Hudspeth county, Texas, 12—1,000 hp. units.

Mainline Station No. 3, Luna county, New Mexico, 12—1,000 hp. units.

Mainline Station No. 4, Cochise county, Arizona, 12—1,000 hp. units.

Mainline Station No. 6, Maricopa county, Arizona, 10—1,000 hp. units.

Additions to Compressor Stations

Dumas Station, Moore county, Texas, 15—1,000 hp. units.

Mainline Station No. 2, El Paso county, Texas, 6—1,000 hp. units.

Mainline Station No. 2, Pima county, Arizona, 4—1,000 hp. units.

Eunice-Mainline, Lea county, New Mexico, 5—1,000 hp. units.

(b) Additions to dehydration plant at Dumas, Moore county, Texas, to add capacity of 143,000 m cu. ft. per day.

(c) Appurtenances, including employees' cottages, necessary for the utilization of all the facilities described above for the third stage.

[2] *Facilities which the California applicants seek authority to construct and operate:*

First Stage—125,000 thousand cubic feet per day

(a) 214 miles of 30-inch pipe line from the Arizona-California border line connection with El Paso's line to Santa Fe Springs, California.

(b) 4¼ miles of 12-inch and 1 mile of 8-inch lateral line from the main line to Riverside, California.

(c) 2 miles of 12-inch lateral line connection between the main line and the Southern Counties Gas Company system at Coyote Hills, Orange county, California.

(d) Stub 12-inch lateral line connections at Santa Fe Springs, Los Angeles County and at Brea, Orange county, California.

applicants to transport out-of-state gas by the operation of these proposed facilities and the existing 26-inch Santa Fe Springs-Los Angeles pipe line.

This integrated pipe line project is planned for three progressive stages of operation, with gas deliveries by the El Paso Natural Gas Company to the California companies at the Arizona-California border to begin by June 1, 1947, and to continue for thirty years. The contract requires the California companies to take gas at an annual load factor of 91 per cent or higher. The maximum contracted volumes to be delivered by El Paso are 125,000 thousand cubic feet per day the first year, 175,000 thousand cubic feet per day, the second, third and fourth years, and 305,000 thousand cubic feet per day the fifth and succeeding years. The final stage is conditioned upon an election by the California applicants prior to September 1, 1949.

Public hearings were held in Washington, D. C., and Los Angeles, California, pursuant to Commission's orders in these consolidated proceedings, and due notice was given to all interested persons. The Railroad Commission of the state of California, and four industrial customers of the California applicants intervened and participated in the hearings. Briefs were filed by all parties on the issues involved. No formal protest or opposition to the proposed interconnected pipe-line system was received. The issuance of the certificates applied for in these proceedings has been recommended by representatives for the Railroad Commission of the state of California, the city of Los Angeles, the city and county of San Francisco, and the Los Angeles Chamber of Commerce.

Jurisdiction

[1, 2] El Paso Natural Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act, because it owns and operates an integrated pipe-line system in Texas, New Mexico, and Arizona, and engages in the transportation of natural gas in interstate commerce and in the sale in interstate commerce of such gas for resale for ultimate public consumption. (FPC order of January 11, 1944, entered in Docket No. G-288.) Upon the completion of the proposed pipe line, the California applicants will become natural gas companies within the purview of the act

(e) Three off-line taps for the Southern California Gas Company near Riverside, Corena, and Beaumont, California, consisting of meters, scrubbers, regulators, piping, and controls.

(f) Four off-line taps for the Southern Counties Gas Company near Brea, Carbon Canyon, Coyote Hills, and Santa Fe Springs, California, consisting of meters, scrubbers, regulators, piping and controls.

(g) River crossings, meters, regulators and other appurtenances, including employees' cottages, necessary for the utilization of all the facilities described for the first stage above.

(h) Operation of existing 10-mile long 26-inch connecting line between Santa Fe Springs and Spence Street Station in Los Angeles, California.

Second Stage—175,000 thousand cubic feet per day

(a) Operation of facilities only with no additional construction planned.

Third Stage—305,000 thousand cubic feet per day

(a) Mainline Compressor Station near Blythe, California: 10—1,000 hp. units.

(b) Three pressure-limiting stations spaced between Blythe and Santa Fe Springs, California.

(c) Meters, regulators, and other appurtenances, including employees' cottages, necessary for the utilization of all the facilities described for the third stage above.

as they then will engage in the transportation of natural gas in interstate commerce.

The construction and operation of the proposed interconnected pipe-line facilities for the purposes of transporting natural gas in interstate commerce and selling natural gas in interstate commerce for resale for ultimate public consumption are subject to the jurisdiction of this Commission and the requirements of subsections (c) and (e) of § 7 of the Natural Gas Act.

California Gas Supply and Demands

[3] The record reveals that the California applicants own no natural gas production property and are dependent upon oil well gas, rather than dry gas, for their main local source of supply, and that the available supply is declining rapidly. The producers are primarily interested in oil production, so the gas companies must adapt their operations to the rate and volume of oil production to utilize the producers' surplus oil well gas. Lately the oil companies have undertaken major pressure maintenance and repressuring projects to increase future oil recoveries, and this has withheld large volumes of gas from the California gas companies. It may be fifteen to twenty-five years before this gas will become available. From 1940 to 1945 pressure maintenance and repressure gas in California increased from approximately 5,000,000 thousand cubic feet a year to 93,000,000 thousand cubic feet. It was testified that only 2 per cent of the annual production of oil well gas in California is now wasted.

There is evidence that the volume of oil well gas available to applicants has not increased appreciably in recent years, even during the war period when oil was produced in California in unprecedented quantities for military purposes. The evidence shows that future oil production in California probably will not equal those large war-time withdrawals from reserves, and that reduction of oil production will result in lesser volumes of surplus gas available to the gas companies. In 1945, the total supply of gas available to the California applicants was 183,800,000 thousand cubic feet, comprised of 177,700,000 thousand cubic feet of oil well gas and 6,100,000 thousand cubic feet of dry gas. The estimate of California oil well gas and dry gas available to applicants shows the following decline:

M Cu. Ft. Available Per Year

Year	Oil Well Gas	Dry Gas	Total Gas
1947	124,000,000	5,700,000	129,700,000
1948	110,200,000	5,500,000	115,700,000
1949	99,400,000	5,000,000	104,400,000

M Cu. Ft. Available on Peak Day

Year	Oil Well Gas	Dry Gas	Storage	Total Gas
1947	340,000	40,000	272,000	652,000
1948	301,000	36,000	272,000	609,000
1949	272,000	32,000	272,000	576,000

In 1945, the California applicants served more than a million meters, or about three and a half million persons; and the gas requirements of firm customers aggregated 113,640,000 thousand cubic feet and of interruptible customers were 91,197,000 thousand cubic feet. The domestic and commercial customers use great volumes of gas for space heating, and the domestic customers use large quantities of gas for cooking and water heating. The saturation of house-heating use is 99 per cent. The consumption per meter has been rising steadily over

the years, and the population of the area served by applicants continues to grow. There is no competition from coal and little from fuel oil or electricity for space heating, cooking, and water heating.

It appears that within a short period of time the available local gas supply will not be sufficient to meet the firm demands for gas upon the California applicants, which would result in serious detriment to the public interest.

The actual firm requirements supplied for the peak day of the winter season of 1945-1946 were 620,155 thousand cubic feet, the interruptible requirements were 244,922 thousand cubic feet of which 14,482 thousand cubic feet were actually served, and the total requirements for gas were 865,077 thousand cubic feet. The estimated peak day deficiencies in local gas supply to meet firm and interruptible demands for the next three years are shown by the following tabulation:

	Peak Day M Cu. Ft.					
		Demand		Deficiency		
Year	Supply	Firm	Interruptible	Firm	Interruptible	Total
1947	652,000	774,000	277,000	122,000	277,000	399,000
1948	609,000	835,000	273,000	226,000	273,000	499,000
1949	576,000	865,000	281,000	289,000	281,000	570,000

The record shows a predicted annual deficiency in the local available gas supply to meet firm demands, ranging from 10,000,000 thousand cubic feet in 1948 to 25,273,000 thousand cubic feet in 1950. The estimated annual deficiency for interruptible customers ranges from 69,549,000 thousand cubic feet in 1948 to 87,682,000 thousand cubic feet in 1950. An expert witness stated that this trend in deficiencies will continue beyond 1950, and will become progressively worse.

A witness for the California Commission testified that the California applicants were conservative in their estimates of future customer requirements, and that utilities should obtain a gas supply to meet immediate potential demands and maximum future demands. He predicted that the California applicants will require additional gas supplies to meet peak day and annual deficiencies sooner than they now anticipate.

In connection with the granting of its certificate of public convenience and necessity for the California segment of the proposed Texas-to-California pipe line, the California Commission stated that the local gas supply available to the utilities serving southern California must be augmented with out-of-state gas, "not only to meet the growth in load but to maintain present customer service."[8] From the evidence this Commission concludes that the planned 305,000 thousand cubic feet per day capacity will be required in the near future to meet anticipated deficiencies.

Texas and New Mexico Gas Supply for Proposed Pipe Line

El Paso has contracted to supply natural gas to the California companies in the specified volumes for thirty years. To meet this obligation El Paso has executed contracts with

[8] Re Southern California Gas Co. and Southern Counties Gas Co. Decision No. 38668, February 5, 1946.

(1) Phillips Petroleum Company for a 30-year gas supply from the Permian Basin, Panhandle and Hugoton Fields for a possible maximum of 255,000 thousand cubic feet per day; (2) Gulf Oil Corporation for a 20-year gas supply up to 30,000 thousand cubic feet per day from the Permian Basin; (3) Shell Oil Company for a 20-year supply of Permian Basin gas at 20,000 thousand cubic feet per day; (4) Warren Petroleum Corporation for a 15-year gas supply of 10,000 thousand cubic feet per day from the Permian Basin. El Paso has numerous active additional Permian Basin gas purchase contracts to supply its existing system, and is negotiating for additional volumes of gas being wasted in the Permian Basin along the route of the proposed pipe line.

The Permian Basin in West Texas and New Mexico is spotted with many oil fields, and the major portion of the gas is produced in conjunction with oil production. Large volumes (383,000 thousand cubic feet daily) of casinghead gas in the field and residue gas from gasoline plants are being wasted in the Permian Basin. An important consideration supporting the granting of this certificate is the strong showing by El Paso that it will probably utilize presently wasted Permian Basin oil well gas for approximately 75 per cent of the maximum requirements of 305,000 thousand cubic feet a day and take the remainder from the dry gas Panhandle and Hugoton Fields. This utilization of wasted natural gas for beneficial public use fosters a sound policy of conservation.

All applicants agree that it is essential to back-up the Permian Basin oil well gas with the dry gas reserves of the Panhandle-Hugoton area in order to finance the project. Also this combination of supply sources is required by the California applicants as an indispensable part of the project. It is well known that there are inherent difficulties in obtaining a long and continuous supply of surplus gas from oil fields.

The evidence on gas reserves available to the proposed pipe line from the Panhandle, Hugoton, and Permian Basin sources is comprehensive. There is expert opinion evidence that Phillips will be able to supply El Paso with gas from the west portion of the Panhandle Field and from the southern portion of the Hugoton Field in Texas at the rate of 190,000 thousand cubic feet a day for thirty years. This witness also testified that El Paso's pipeline system will be the market outlet for future Permian Basin gas. He added that newly developed fields and future discoveries will offset the gradual deficiency from present Permian Basin fields for the 30-year period. It appears that the gas reserves available to El Paso will be adequate for approximately thirty years to meet the expected daily requirements of its present system plus the proposed pipe line to California, when the prospects of future gas discoveries in the Permian Basin are taken into consideration.

Pipe-line Design Construction and Costs

El Paso's pipe-line design is based upon an ultimate maximum delivery of 305,000 thousand cubic feet per day. For the 737 miles between the Arizona-California border and the Eunice Compressor Station in New Mexico,

26-inch diameter pipe will be used; and for the 251-mile extension, scheduled for the second year, from Eunice to Dumas in the Texas Panhandle, 24-inch pipe will be utilized. The proposed compressor stations will have a total installed horsepower of 30,800, 44,800, and 129,800, respectively, for the three stages of development. Lateral pipe lines, purification and dehydration plants, and appurtenant facilities are a part of this design. El Paso's proposed pipe-line system, at the ultimate capacity of 305,000 thousand cubic feet per day, is estimated to have an aggregate cost of $53,800,000.

The California applicants' 214-mile connecting pipe line from the Arizona-California border to Santa Fe Springs will be 30 inches in diameter, and this pipe line is designed for 52,000 thousand cubic feet per day of line-pack storage in addition to the rated delivery capacity of 305,000 thousand cubic feet daily. This line-pack storage is stated to cost one-sixth of the equivalent amount of surface holder storage. A main line compressor station of 10,000 horsepower is planned, as well as pressure-limiting stations, lateral lines, and appurtenant facilities. The estimated capital cost of the installed ultimate capacity of 305,000 thousand cubic feet per day totals $16,225,000.

The facilities proposed by El Paso and the California companies will be adequate for the purpose of transporting the contracted volumes of gas, and the estimated capital costs appear to be reasonable.

Financing of the Facilities

Contracts for the entire financing of El Paso's project are in the record here. The bond purchase contracts provide for the sale by El Paso to six insurance companies of $36,000,000 of 3 per cent 20-year first mortgage bonds. The sale price of the bonds was 102. There is an agreement with The Chase National Bank for a loan to El Paso of $8,500,000 at 2 per cent interest. El Paso has a contract with underwriters for the sale of $7,500,000 of preferred stock at a dividend rate of 4 to 4½ per cent depending upon the market, and for the sale of $4,000,000 of common stock to present holders at $40 a share. This will provide El Paso with $56,000,000 to meet construction costs and to refinance, and allows for a $2,000,000 Contingencies Fund. Upon the completion of this project and financing, El Paso will have 53 per cent bonds, 13 per cent bank loan, and 34 per cent equity related to its total cost of plant less depreciation.

The California companies do not propose to issue additional securities now, but plan to finance their project from current funds supplemented by readily available bank loans of $10,000,000. Eventually the capital invested in the pipe line will be evidenced through issuance of bonds under the existing open-end indentures, which allow the issuance of additional bonds to the extent of 66⅔ per cent of net bondable property additions. The total assets of Southern California Gas Company are $179,000,000 and of Southern Counties Gas Company are $47,000,000. The financial condition of the California applicants, and the low proportion of their existing capital investments represented by outstanding bonds make this proposed financing method sound and feasible.

The Commission finds that all three applicants possess sufficient financial resources with which to construct the proposed facilities to render the planned service, and that the overall project can be financed on a reasonable basis, consistent with the public interest.

Pipe-line Operating Costs and Return

The estimate of El Paso's operating revenues and expenses appears to be reasonable, and, as presently estimated, to result in a 6 per cent rate of return for the first year's operation. For the second's year operation the rate of return on the estimated capital investment less depreciation is estimated to be 5.8 per cent. Under the ultimate capacity of 305,000 thousand cubic feet of gas per day, El Paso is estimated to have operating revenues of $14,000,000, expenses of $9,900,000, and net income after taxes of $3,000,000. It is estimated that this will produce a 6.3 per cent rate of return on the estimated $47,200,000 of capital investment less depreciation.

The estimated operating expenses, fixed taxes, and depreciation for the California portion of the pipe line total $7,200,000 for the first year, $9,400,000 for the second, third, and fourth years, and $15,300,000 under the 305,000 thousand cubic feet stage or fifth year. By showing a 6 per cent rate of return, the California companies estimated the total annual cost of delivering Texas and New Mexico gas to the edge of Los Angeles to be $8,500,000, $10,700,000, and $16,700,000, respectively, for each of the successive pipe-line delivery stages covering 125,000 thousand cubic feet, 175,000 thousand cubic feet, and 305,000 thousand cubic feet daily. The California companies serve 1,100 BTU natural gas in southern California, and the significant figures are the equivalent costs per thousand cubic feet of gas delivered by the proposed pipe line at the outskirts of Los Angeles on an 1,100 BTU basis. Those figures are 21 cents per thousand cubic feet the first year, 19 cents per thousand cubic feet the second year, and 18 cents per thousand cubic feet in 1951 under the 305,000 thousand cubic feet per day capacity stage of the pipe line.[4] These unit costs compare with the estimated present cost of 16 to 17 cents per thousand cubic feet of gas produced in California and delivered to the Los Angeles area.

El Paso's Interstate Wholesale Rate

El Paso proposes to charge the California companies the following average rates, for 1,050 BTU gas delivered at the Arizona-California border at a 91 per cent load factor for resale in California: (1) 15.08 cents per thousand cubic feet during the first year under the 125,000 thousand cubic feet per day stage; (2) 14.52 cents per thousand cubic feet during the second, third, and fourth years under the 175,000 thousand cubic feet per day stage; and (3) 13.92 cents per thousand cubic feet in the fifth and succeeding years under the 305,000 thousand cubic feet daily capacity stage.[5]

Public Convenience and Necessity

This case is distinguishable from others which have been considered by

[4] Computed on a 14.73 psia pressure base.

[5] Computed on the contract pressure base of 14.9 psia.

the Commission involving midwestern and eastern natural gas pipe-line companies. Applicant El Paso by means of its proposed pipe-line project will utilize, as its major source of supply, oil well gas from the Permian Basin which otherwise would be wasted. Moreover, the record shows that no other natural gas pipe-line company proposes to utilize such gas or to serve the proposed market. The proposed project will serve only one market of any consequence in contiguous areas of southern California, and lacks the sometimes conflicting interests present in major certificate proceedings before the Commission. In addition, the record contains evidence of the available natural gas reserves and deliverability for the ultimate capacity of the proposed pipe line for thirty years. The completion of construction for the third stage will be contingent upon a firm commitment by the California applicants for a volume of gas up to 305,000 thousand cubic feet per day.

Upon consideration of the record in this case, the Commission concludes that there is a public need or demand for out-of-state natural gas in southern California, and that the economically feasible pipe-line system proposed by the three qualified applicants will serve that need adequately and properly for the reasonably foreseeable future. Also, the Commission finds that the three applicants have met the requirements for a certificate of public convenience and necessity, and that the proposed construction, operation, service, and sale are required by the present and future public convenience and necessity. All of the applicants are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the act and the requirements, rules, and regulations of the Commission under the Natural Gas Act.

The evidence shows that the prospects for discovering within California the necessary large volumes of gas which must be made available to the California applicants within the next few years are not encouraging. The California applicants are confronted, therefore, with a rapidly declining supply of local gas and an increasing customer demand for gas. The record shows market requirements in the near future for the proposed 305,000 thousand cubic feet of gas per day from Texas and New Mexico to supplement the available California supply of gas. The gas contract between El Paso and the California applicants contains the firm commitments supported by such evidence, for the three progressive stages of deliveries with the ultimate stage becoming effective upon the exercise of an option by the California applicants. The president of the California applicants testified that his companies will need the 305,000 thousand cubic feet daily from El Paso, and that he intends to exercise that option. It is proper for utilities such as applicants to make provision for adequate service in accordance with definite market demands for the reasonably foreseeable future.

In view of the fact that this project embraces an integrated pipe-line system, a single appropriate order will be adopted issuing to the three applicants certificates essential for its consummation subject only to a condition as to the construction of the third

stage. In connection with the proposed construction and operation to increase the delivery capacity of the pipe line from 175,000 thousand cubic feet up to 305,000 thousand cubic feet per day authorization of this third stage is conditioned upon the exercise by the California applicants of their option at some time before the option limit of September 1, 1949. The volumes of gas to be delivered and the dates of delivery by El Paso will be in accordance with the provisions of its contract with the California applicants.

FEDERAL POWER COMMISSION

Re Reynosa Pipe Line Company

Docket No. G-595, Opinion No. 135
June 6, 1946

APPLICATION *for authority to export natural gas to Mexico; granted subject to conditions.*

Gas, § 11 — Exportation of natural gas — Imposition of conditions.

1. Exportation of natural gas to Mexico for industrial use was deemed not to be inconsistent with the public interest only if limited by conditions that exportation be made in accordance with terms of a contract between the Mexican and local concerns as submitted; that exportation be confined to natural gas produced in specified fields; that it be made only in such quantities as, when added to the quantities of gas that might be received from Mexican sources of supply, would enable the Mexican company to meet market requirements not exceeding 50,000 thousand cubic feet per day; and that in no event should deliveries by the local company to the Mexican company exceed 50,000 thousand cubic feet per day; and that authorization should not constitute justification for service denial in the United States, it being the intent of the authorization that at all times local interests should receive preferential service over that to the Mexican concern, p. 167.

Interstate commerce, § 37.1 — Scope of Natural Gas Act — Pipe line exporting natural gas.

2. A company proposing to construct and operate, within the boundaries of a single state, facilities for the transportation of natural gas for consumption in a foreign country is subject to the provisions of § 7(c) of the Natural Gas Act, 15 USCA § 717f(c), as amended, p. 167.

Interstate commerce, § 37.1 — Construction of Natural Gas Act — Meaning of "interstate commerce."

3. The term "interstate commerce," as used in the Natural Gas Act, is to be interpreted as embracing "foreign commerce," since "any point outside" of a state includes a point in a foreign country, p. 167.

Statutes, § 11 — Rules of construction — Congressional intent.

4. In construing a Federal statute, the primary and elementary assumption must be that Congress said what it meant and meant what it said, p. 167.

Interstate commerce, § 37.1 — Scope of Natural Gas Act — Transportation and sale in foreign commerce.

5. The declaration of policy in the Natural Gas Act shows that Congress intended to regulate the transportation and sale of natural gas in foreign commerce, and the qualifying words in § 2(7) of the act, 15 USCA § 717a (7), "only in so far as such commerce takes place within the United States," simply means that the regulation contemplated is not applicable to properties or operations beyond the boundaries of the United States, p. 167.

Certificates of convenience and necessity, § 53.5 — Requirements under Federal Natural Gas Act — Exportation to foreign country.

6. Construction and operation by a local company of a proposed natural gas pipe line from local fields to point of exportation are subject to certificate requirements of § 7(c) of the Natural Gas Act, 15 USCA § 717f(c), as amended, p. 167.

(SMITH, Commissioner concurs in separate opinion; DRAPER, Commissioner concurs in part and dissents in part.)

APPEARANCES: Binford Arney, for applicant; Birge Holt and Vergilio Garza, Jr., for Gas Industrial de Monterrey, S. A.; James Noel, Special Assistant Attorney General, and James D. Smullen, Assistant Attorney General, for Railroad Commission of Texas; Henry F. Holland and Joaquin Garza Y. Garza, for Compania Mexicana de Gas, S. A.; Charles E. McGee, Assistant General Counsel, Alvin A. Kurtz, and Howell Purdue, for Federal Power Commission.

By the COMMISSION: This matter is before us for decision upon rehearing of our order entered on May 8, 1945, 58 PUR(NS) 306, dismissing without prejudice the application of Reynosa Pipe Line Company ("Reynosa") filed on November 13, 1944 (Docket No. G–595), under § 3 of the Natural Gas Act, 15 USCA § 717b, for authorization to export natural gas to Mexico.

Reynosa is a corporation organized under the laws of the state of Texas, with its principal place of business at Corpus Christi, Texas, and is a wholly owned subsidiary of La Gloria Corporation, another Texas corporation. The natural gas which Reynosa proposes to export is to be obtained from reserves in the La Blanca, North Weslaco, and South Weslaco Fields in Hidalgo county, Texas, owned by La Gloria Corporation.

On November 13, 1944, Reynosa also filed an application (Docket No. G–594) for a certificate of public convenience and necessity, pursuant to § 7(c) of the Natural Gas Act, 15 USCA § 717f(c), as amended, authorizing it to construct and operate a 12¾ inch transmission pipe line, approximately 30 miles in length, together with appurtenant facilities, extending in a southerly direction from the La Blanca Field to the North Weslaco and South Weslaco Fields, thence in a westerly direction to the Mexican border, near the city of Reynosa, Mexico. The company proposes

to connect such pipe line at the international boundary with a pipe line to be constructed by Gas Industrial de Monterrey, S. A. ("Gas Industrial"). Reynosa's pipe line is to be used solely to transmit natural gas from the fields in Hidalgo county to the border, where it proposes to sell and deliver the gas to Gas Industrial. The latter company is then to transmit the gas to the city of Monterrey, Mexico, for use by industrial consumers.

Reynosa has also filed an application (Docket No. G–596) for a Presidential Permit pursuant to Executive Order No. 8202 for the construction, operation, maintenance, and connection at the international boundary of facilities for the exportation of natural gas.

Reynosa, in its application for a rehearing filed on June 6, 1945, in Docket Nos. G–594, G–595, and G–596, requested that the Commission's order of May 8, 1945, *supra,* be set aside, that rehearing be granted and that it be permitted upon such rehearing to present further evidence in support of its applications. In addition to the exceptions taken to the Commission's determination, Reynosa, responsive to our original opinion in this proceeding, stated that it would introduce evidence disclosing (1) insufficient quantities of natural gas in Mexico, accessible or available to the Monterrey market to supply the requirements therein which are proposed to be served, (2) the industrial activity in Monterrey, (3) the need for natural gas in Monterrey, and (4) the availability of natural gas in Texas to supply Monterrey industries.

On July 5, 1945, the Commission granted the petition for rehearing and on July 10, 1945, Dockets Nos. G–594 and G–595 were consolidated for hearing. Thereafter, on August 20, 1945, Reynosa withdrew its application for a certificate under § 7(c). Rehearing was held in Docket No. G–595 in Washington, D. C., from December 12 to December 19, 1945 and from April 1 to April 19, 1946. Permission to intervene in the proceedings was granted to the Railroad Commission of Texas, Compania Mexicana de Gas, S. A. ("Compania"), protestants, and to Gas Industrial.

Gas Industrial is a corporation organized under the laws of Mexico with its principal place of business in Monterrey, and was organized for the purpose of supplying natural gas to certain industrial concerns in Monterrey, hereinafter sometimes referred to as the "Industrial Group," by means of a pipe line from the international boundary to that city. Under its permit from the Mexican Government, Gas Industrial can only furnish gas to the industrial concerns subscribing to its stock, which shall not exceed twenty-five in number. At the time of the original hearing Gas Industrial had fifteen subscribers named in the application; and subsequent thereto two additional concerns, Cementos Del Norte, S. A. and Planta Elect. Grupo Industrial, became subscribers to its stock. All necessary authorization has been secured by Gas Industrial from the Mexican Government.

Compania is a corporation organized under the laws of Mexico with its principal place of business in Monterrey, and has been since 1929 and is now engaged in the transportation to, and sale of natural gas in, Monter-

rey by means of a pipe line extending from the international boundary near Roma, Texas, to Monterrey. Its principal source of supply is natural gas produced in Texas and purchased from the United Gas Pipe Line Company, the latter supplying approximately 31,275 thousand cubic feet per day at a base pressure of 2 pounds above an assumed atmospheric pressure of 14.4 pounds. In a related proceeding (Docket No. G–102) Applicant, United Gas Pipe Line Company, requested authorization to continue the exportation of gas to Mexico through the facilities of Compania. On June 6, 1946, we issued an order authorizing such continued exportation in an amount not to exceed 31,275 thousand cubic feet per day.

Reynosa and Gas Industrial have entered into a 10-year contract whereby Reynosa will deliver to Gas Industrial up to 60,000 thousand cubic feet per day for the sole purpose of supplying the original fifteen members of the Industrial Group and other customers of Gas Industrial.

The evidence shows that there is now an increasing need for natural gas in Monterrey above that which can presently be supplied by Compania through its existing pipe-line facilities and, that the industries comprising the Industrial Group have had to curtail substantially their operations by reason of the shortage in gas supplies available to them. It was this pressing need for additional volumes of natural gas that caused the formation of Gas Industrial for the sole purpose of supplying the Industrial Group with natural gas. At the present time the Industrial Group is only receiving approximately 16,000 thousand cubic feet of natural gas per day from Compania as compared with estimated present requirements of 31,951 thousand cubic feet per day. It is estimated that the requirements of the Industrial Group will increase to 48,159 thousand cubic feet by the end of 1950. No evidence was offered that any additional volumes will be required thereafter.

The record is clear that Gas Industrial is interested only in obtaining natural gas for the Industrial Group, preferably from Mexico if available, and that it has no desire to distribute and sell gas to others. Gas Industrial has stated that it would not now be requesting the exportation of natural gas to Mexico if reserves were available at this time in its own country, and that it only needs gas from Texas until such time as Mexican gas may be available to it.

Three of the four producing gas fields in northern Mexico, namely, La Presa, Lajitas and Rancherias, are now connected with the transmission line of Compania. This company not only has a contract for the purchase of all of the gas produced in the La Presa and Rancherias Fields, but it is also required by its concession from the Mexican Government to take such Mexican gas when it is offered. Compania has expressed the desire to secure all local gas possible. The gas produced in these two fields is not, therefore, available to Gas Industrial and neither is that produced in the Lajitas Field. All of the gas produced from the latter field is now being transported by Compania to Monterrey for the account of Hydrocarburos pursuant to terms of Compania's concession. The extent to which addi-

tional gas may be produced in those three fields in the future and made available to Compania will therefore reduce the amount which the latter will take from United Gas Pipe Line Company, and consequently, the total amount of gas which will be exported from Texas through the facilities of Compania and United Gas Pipe Line Company.

Only a portion of the fourth producing gas field in northern Mexico lies within Mexico. This portion is called the Mission Field. The remainder of the field, termed the Penitas Field, is located in Texas. The Mission Field lies within a few miles of the proposed line of Gas Industrial. While the evidence respecting this field is not of much probative value, it is sufficient to disclose that, while some gas is there available, the presently available gas supply is not sufficient to meet the requirements of Gas Industrial.

It is obviously in the interest of the Mexican Government, particularly in the light of the recent expenditures by it of large sums for the development of its national natural gas reserves, to insure Mexican markets for such reserves. We may assume that the Mexican Government in the exercise of its informed judgment in the matters would not have issued a permit to Gas Industrial to serve such a large market as Monterrey, if to have done so would seriously retard the further development and utilization of available Mexican gas. In this connection, the permit granted to Gas Industrial contains a provision requiring the latter to take up to 25 per cent of the consumption of the industrial concerns served by it from Mexican fields if available. It is also noted that there was recently filed with the Mexican Government an application by one Fidel C. Martinez for a concession authorizing the construction and operation of a pipe line from the vicinity of Reynosa, Mexico, to supply approximately 35,000 thousand cubic feet of natural gas per day to the cities of Monclova, Saltillo, and Torreon in the state of Coahuila, Mexico. This application states that the natural gas for such cities will come from the northern region of Mexico or from southern Texas.

The evidence as to proven gas reserves in northern Mexico presently available discloses an insufficient amount to meet the deficiencies of gas supply of the Industrial Group and the estimated requirements of the proposed Martinez pipe line. Nor is there any evidence that there will be natural gas available in northern Mexico of sufficient volume within the reasonably near future.

Compania contends that if Reynosa is not authorized to export natural gas to Mexico, then it will construct a pipe line parallel to its existing pipe line for the purpose of serving the Monterrey market including the requirements of the Industrial Group. Whether Compania should be allowed to construct such a pipe line is, of course, a matter that concerns the Mexican Government rather than this Commission.

The Railroad Commission of Texas urges that industries of Texas should have first call on the closest sources of supply of natural gas; that the natural gas reserves in Mexico should be fully developed and utilized and not held pending depletion of reserves in Texas; and that it is the duty of

Mexico to explore and develop its own reserves.

The evidence in this case discloses that there are sufficient natural gas reserves in Texas to meet the presently known needs of its industries. Particularly is this so in the area from which Reynosa will transport natural gas. La Gloria Corporation, the parent of Reynosa and its supplier of natural gas, has contracted to deliver natural gas to Carthage Hydrocol, Inc., a plant proposed to be constructed at Brownsville, Texas. It is proposed that such deliveries will be made from La Blanca, South Weslaco, and other fields in southwest Texas and will be subject to prior commitments of La Gloria to sell gas to Gas Industrial and Rio Grande Valley Gas Company. It appears, however, from the evidence that La Gloria's reserves in these fields are adequate to supply the volumes of natural gas proposed to be exported and its contractual requirements to serve Carthage Hydrocol, Inc., and Rio Grande Valley Gas Company.

[1] Upon consideration of the record before us, we find that the exportation of natural gas by Reynosa to Mexico will not be inconsistent with the public interest, if limited inter alia, by conditions as follows: that the exportation be made in accordance with terms of the contract between Reynosa and Gas Industrial as submitted except as hereinafter specified; that the exportation be confined to natural gas produced in the La Blanca, North Weslaco, and South Weslaco Fields; that the exportation shall be made only in such quantities as, when added to the quantities of gas that may be received from Mexican sources of gas supply under its permit, will enable Gas Industrial to meet market requirements not exceeding 50,000 thousand cubic feet per day, and in no event shall deliveries by Reynosa to Gas Industrial exceed 50,000 thousand cubic feet per day; that the authorization hereby granted shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time during the term hereof, for consumption in the United States by such person or municipality, it being the intent of this authorization that at all times, persons and municipalities in the United States are to receive preferential service over that to Gas Industrial.

[2–6] There remains for consideration the question whether the export authorization under § 3 of the Natural Gas Act should be further limited by requiring Reynosa, as a condition precedent thereto, to obtain a certificate of public convenience and necessity pursuant to § 7(c) of the act, as amended, authorizing the construction and operation of the pipe line from the Hidalgo county fields to the border.

The provisions of the Natural Gas Act and its legislative history, as well as decisions of the United States Supreme Court involving analogous provisions of the Interestate Commerce Act, compel the conclusion that a company which proposes to construct and operate, within the boundaries of a single state, facilities for the transportation of natural gas for consumption in a foreign country, is subject to the provisions of § 7(c), as amended. The declaration of policy in § 1(a), 15 USCA § 717(a) recites that

". . . Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and *foreign* commerce is necessary in the public interest." The provisions of § 7(c) are made to apply to a "natural-gas company or person which will be a natural-gas company upon completion of" a "proposed construction," and to a person who shall engage in "the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction" of "facilities therefor," or "operate" "such facilities." "Natural-gas company" is defined to mean "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." (§ 2(6), 15 USCA § 717a (6)). "Interstate commerce" is defined to mean "commerce between any point in a state and *any point outside thereof*, . . . but only in so far as such commerce takes place within the United States" (§ 2(7)). (Italics added.)

The foregoing statutory definition of "interstate commerce" is to be interpreted as embracing "foreign commerce," for "any point outside" of a state includes a point in a foreign country. In construing a statute, the primary and elementary assumption must be that Congress said what it meant and meant what it said. Also it will be noted from the above-quoted declaration of policy that Congress intended to regulate the transportation and sale of natural gas in foreign commerce. Such regulation was necessary in order to give effect to the design of Congress, shown by the legislative history of the act, to fill the gap in regulation which existed.[1] The concluding portion of § 2(7), "only in so far as such commerce takes place within the United States," simply means that the regulation contemplated is not applicable to properties or operations beyond the boundaries of the United States. Substantially identical words in the Interstate Commerce Act have been construed consistently as meaning that that act "applies to international commerce only in so far as the transportation takes place within the United States." Lewis-Simas-Jones Co. v. Southern P. Co. (1931) 283 US 654, 660, 75 L ed 1333, 51 S Ct 592. See also Texas & P. R. Co. v. United States (1933) 289 US 627, 636, 77 L ed 1410, 53 S Ct 768; Oregon-Washington R. & Nav. Co. v. Strauss & Co. (1934) 73 F2d 912, 913, certiorari denied (1935) 294 US 723, 79 L ed 1255, 55 S Ct 551. ". . . the Interstate Commerce Act applies to the carriage in this country, though that part of the carriage is within the limits of a single state." Pennslyvania R. Co. v. Public Utilities Commission (1936) 298 US 170, 176, 80 L ed 1130, 56 S Ct 687.

Further, the legislative history discloses that Congress specifically intended that § 7(c) should apply to foreign commerce. H. R. 5249 (77th Cong. 1st Sess.) which, as amended,

[1] The power of Congress to regulate foreign commerce is exclusive; and a state Commission does not possess the power or authority either to require a certificate of public convenience and necessity for the construction or operation of facilities solely for foreign commerce, or to regulate the rates for gas sold at wholesale in foreign commerce. Sault Ste. Marie v. International Transit Co. (1914) 234 US 333, 340, 58 L ed 1337, 34 S Ct 826, 52 LRA(NS) 574; *Cf.* Missouri ex rel. Barrett v. Kansas Nat. Gas Co. 265 US 298, 68 L ed 1027, PUR1924E, 78, 44 S Ct 544.

became the amendment to § 7(c), originally provided:

"(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, or undertake the construction . . . of facilities therefor, . . ." unless a certificate is in force: *"Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas in interstate *or foreign commerce* on the effective date of this amendatory act," etc., a certificate shall issue without further proof that public convenience and necessity will be served. (Italics added.)

Report No. 1290 of the House Committee to accompany H. R. 5249 shows that the committee amended the above-quoted language of § 7(c) by striking out the words "in interstate or foreign commerce" and inserting in lieu thereof the words "subject to the jurisdiction of the Commission." In explanation of the committee amendments the report stated, at page 4:

"The committee has omitted subsection (h) of the bill as introduced, and has inserted the words 'subject to the jurisdiction of the Commission' after the word 'gas' in line 10 on page 1, and has substituted the same words in line 7, page 2, in place of the words 'in interstate or foreign commerce' which are stricken out. *It is believed that the meaning of the bill, with these changes, is substantially the same as before and that the jurisdiction of the Commission is substantially unchanged by the amendments;* . . ." (Italics added.)

We therefore hold that the construction and operation by Reynosa of the proposed pipe line from the fields to the point of exportation, are subject to the requirements of § 7(c) as amended.

Although Reynosa's application under § 7(c) was not before us at the time of the rehearing, the evidence presented at the several hearings herein was so thoroughly comprehensive that it clearly encompasses the question whether a certificate of public convenience and necessity should be granted. This evidence has been considered and appears to justify the issuance of a certificate without additional extensive exploration or inquiry. The authorization to export natural gas to Mexico will therefore be granted subject to the condition, among others, that such authorization shall be without force or effect unless and until Reynosa files an application under § 7(c) and a certificate by this Commission issues thereupon. In the event Reynosa files such an application it would, by reason of the decision of the Commission permitting the exportation, be appropriate to set the matter for hearing in accordance with the abridged hearing procedure provided by Commission's Order No. 130. The evidence heretofore adduced, pertinent and relevant to the issues in the § 7(c) proceeding, may be incorporated by reference.

SMITH, Commissioner, concurring: When this matter was originally before the Commission the majority, in denying the authority sought to export gas for industrial use in Mexico, held that:

"There is another aspect of this matter which has given us concern. In connection with applications for certificates of convenience and necessity for the construction and operation of facilities within this country, inquiry is made with respect to sources of fuel supply and availability of natural gas in the areas where the applicant proposes to make deliveries. We believe that in determining the question posed by § 3 of the act it is appropriate for us to make similar inquiry into the availability of natural gas and other fuels for utilization within the country of the exportee. If, therefore, susbtantial quantities of natural gas are available in Mexico for use by the industries of Monterrey, we would feel constrained, under the circumstances here existing, to withhold the authorization to export sought by applicant." [1]

And again, after discussing the evidence relating to the use and availability of natural gas and other fuel to the industries of Monterrey:

"We recognize the possibility of the development in this environment of other and larger gas producing fields and we believe that a more adequate showing should have been made by applicant of the possibility of obtaining supplies of natural gas within the Republic of Mexico." [2]

I believed then—and I am of the same opinion still—that the possibility of meeting the fuel requirements of a neighboring country from its local sources of supply is a factor of large importance for consideration by this Commission in determining whether or not the exportation of natural gas from our nation's limited and irreplaceable reserves should be found to be "consistent with the public interest" of the United States, and therefore permitted.

Notwithstanding the strictly limited interpretation placed judicially upon similar phraseology in the Federal Power Act,[3] it seems to me inconceivable that the Congress intended by its use of such language to fix more lenient standards in the case of proposed exportation of natural gas than in the case of its interstate transportation and sale for resale. Surely the Congress did not intend to make it easier for private parties to export quantities of this limited natural resource to a foreign country than to move it from one state to another within the United States. In fact, by including § 3 in the Natural Gas Act Congress evidently meant to establish a special requirement, applying to foreign commerce, in addition to those which must be met where the transportation and sale are in domestic commerce.[4] Hence the importance attached by the Commission throughout this prolonged proceeding upon the possible availability of natural gas in northeastern Mexico has been proper.

I concur in the action of the Commission in conditionally authorizing

[1] In Re Reynosa Pipe Line Co. Opinion No. 122, May 8, 1945, 58 PUR(NS) 306, 310.

[2] *Ibid*, at p. 310.

[3] Pacific Power & Light Co. v. Federal Power Commission (1940) 34 PUR(NS) 153, 111 F2d 1014, construing § 203(a) of the Federal Power Act, 16 USCA § 824b(a), referred to in the dissenting opinion of Commissioner Draper at p. 312 of 58 PUR(NS).

[4] Similarly, the Presidential Permit, required by Executive Order No. 8202, may be viewed as a special requirement applying to foreign commerce in natural gas (or electric energy) which, by § 1(a) of the Natural Gas Act, is declared to be affected with a public interest and subject to Federal regulation.

the proposed exportation at this time because the record is now somewhat more complete regarding the gas situation on the Mexican side of the border. I am satisfied that there is presently not available developed or proven Mexican gas which could now be used to meet the market demand in Monterrey, and also that accessible domestic markets are not now available for the large proven gas reserves of the south Texas fields. Therefore it appears that to refuse permission for the proposed exportation would serve no useful purpose in terms of the reasonably foreseeable public interest.

Despite repeated attempts on the part of this Commission and various parties to the proceeding, however, the record as to Mexican gas resources is still full of uncertainties. Although the applicant, responsive to the language quoted above from the Commission's original opinion, appears to have made some effort in this direction, the fact remains that much of the evidence as to the probable existence, as distinguished from the present proven availability, of Mexican gas is far from satisfactory. Much time has been consumed on this aspect of the record, which could easily have been avoided had the Mexican Government been willing to permit a full disclosure by competent witnesses on this important matter. We are no more concerned with the reasons for this official attitude than we are with such matters as local rates, service, and competitive pipe-line construction within Mexico, which clearly are matters outside the scope of our jurisdiction and proper consideration. This attitude, however, naturally raises some question as to the effect of this action by the Commission upon similar proposals which may hereafter be presented to it. It seems to me that, if the United States is to be called upon as a "good neighbor" to authorize the exportation of a limited and irreplaceable resource, such as natural gas, it is only fair and reasonable to expect coöperation on the part of the government of a country desiring such commodity in disclosing fully the pertinent conditions surrounding its needs.

DRAPER, Commissioner, concurring in part and dissenting in part: I concur in the opinion of the majority granting Reynosa Pipe Line Company authority to export natural gas from the United States to our sister republic, Mexico. However, I am unable to agree with it that a certificate of public convenience and necessity is required under § 7(c) of the Natural Gas Act, because it is my view that "Reynosa" is not now and will not be a "natural-gas company" under the provisions of the Natural Gas Act upon the completion of the facilities necessary to export natural gas which we are authorizing as long as said facilities are used exclusively for performing the service authorized, as is now proposed, and "Reynosa" does not engage in the sale of gas for resale or the transportation of gas for others within the United States by means of such facilities.

UNITED STATES SUPREME COURT

Irene Morgan

v.

Commonwealth of Virginia

No. 704
— US —, 90 L ed —, 66 S Ct 1050
June 3, 1946

APPEAL *from judgment of Supreme Court of Appeals of Virginia affirming conviction of bus passenger for violation of state law requiring segregation of whites and negroes; reversed. For lower court case see (1945) 184 Va 24, 34 SE2d 491.*

Interstate commerce, § 28 — Unlawful burden — Reserved powers of state.

1. The reserved powers of a state will not validate a statute if it unlawfully burdens interstate commerce, p. 174.

Constitutional law, § 3 — Who may raise question — Interstate bus passenger.

2. A passenger on an interstate motorbus, arrested for failure to change seats as directed by the bus operator under a state statute requiring segregation of whites and Negroes, is a proper person to challenge the validity of the statute as a burden on interstate commerce, p. 174.

Interstate commerce, § 4 — Burden by state legislation — Absence of congressional action.

3. State legislation, even in the absence of action by Congress, is invalid if it unduly burdens interstate commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose; where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation, p. 174.

Courts, § 12 — Federal and state — Statute burdening commerce.

4. The degree of interference by state legislation with interstate commerce may be weighed by Federal courts to determine whether the burden makes the statute unconstitutional; the Constitution puts the ultimate power to regulate commerce in Congress rather than the states, p. 175.

Interstate commerce, § 39 — Regulation of motor carriers — Burden imposed by state law.

5. A burden on interstate commerce may arise from a state statute which requires interstate passengers to order their movement on an interstate bus in accordance with local rather than national requirements, p. 176.

Interstate commerce, § 39 — Regulation of motor carriers — Burden of state legislation — Segregation of passengers.

6. A state statute requiring segregation of white and colored passengers in interstate motorbuses unconstitutionally burdens interstate commerce, since the seating arrangements for the different races in interstate motor

travel require a single uniform rule to promote and protect national travel, p. 176.

(BLACK and FRANKFURTER, JJ., concur in separate opinions; BURTON, J., dissents.)

APPEARANCES: Thurgood Marshall, of Baltimore, Maryland, and William H. Hastie, of Washington, D. C., argued the cause for appellant; Abram P. Staples of Richmond, Virginia, argued the cause for appellee.

Mr. Justice REED delivered the opinion of the court: This appeal brings to this court the question of the constitutionality of an act of Virginia,[1] which requires all passenger motor vehicle carriers, both interstate and intrastate,[2] to separate without discrimination[3] the white and colored passengers in their motorbuses so that contiguous seats will not be occupied by persons of different races at the same time. A violation of the requirement of separation by the carrier is a misdemeanor.[4] The driver or other person in charge is directed and required to increase or decrease the space allotted to the respective races as may be necessary or proper and may require passengers to change their seats to comply with the allocation. The operator's failure to enforce the provisions is made a misdemeanor.[5]

These regulations were applied to an interstate passenger, this appellant, on a motor vehicle then making an interstate run or trip. According to the statement of fact by the supreme court of appeals of Virginia, appellant, who is a Negro, was traveling on a motor common carrier, operating under the above-mentioned statute, from Gloucester county, Virginia, through the District of Columbia, to Baltimore, Maryland, the destination of the bus. There were other passengers, both white and colored. On her refusal to accede to a request of the driver to move to a back seat, which was partly occupied by other colored passengers, so as to permit the seat that she vacated to be used by white passengers, a warrant was obtained and appellant was arrested, tried and convicted of a violation of § 4097dd of the Virginia Code.[6] On a writ of

[1] Virginia Code of 1942, §§ 4097z to 4097dd inclusive. The sections are derived from an act of general assembly of Virginia of 1930. Acts of Assembly, Va. 1930, p 343.

[2] Id. §§ 4097z, 4097m, 4097s; Morgan v. Commonwealth (1945) 184 Va 24, 39, 34 SE2d 491.

[3] Id. § 4097aa.

[4] Id. § 4097z, § 4097bb.

[5] Id. § 4097bb.

[6] "4097dd. Violation by passengers; misdemeanor; ejection.—All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $5 nor more than $25 for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating

error the conviction was affirmed by the supreme court of appeals of Virginia. (1945) 184 Va 24, 34 SE2d 491. The court of appeals interpreted the Virginia statute as applicable to appellant since the statute "embraces all motor vehicles and all passengers, both interstate and intrastate."[7] The court of appeals refused to accept appellant's contention that the statute applied was invalid as a delegation of legislative power to the carrier by a concurrent holding "that no power is delegated to the carrier to legislate. . . . The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier." Id. 184 Va at p 38, 34 SE2d at p 497. No complaint is made as to these interpretations of the Virginia statute by the Virginia court.[8]

[1] The errors of the court of appeals that are assigned and relied upon by appellant are in form only two. The first is that the decision is repugnant to clause 3, § 8, Article 1 of the Constitution of the United States,[9] and the second the holding that powers reserved to the states by the Tenth Amendment include the power to require an interstate motor passenger to occupy a seat restricted for the use of his race. Actually, the first question alone needs consideration for if the statute unlawfully burdens interstate commerce, the reserved powers of the state will not validate it.[10]

[2] We think, as the court of appeals apparently did, that the appellant is a proper person to challenge the validity of this statute as a burden on commerce.[11] If it is an invalid burden, the conviction under it would fail. The statute affects appellant as well as the transportation company. Constitutional protection against burdens on commerce is for her benefit on a criminal trial for violation of the challenged statute. New York ex rel. Hatch v. Reardon (1907) 204 US 152, 160, 51 L ed 415, 422, 27 S Ct 188, 9 Ann Cas 736; Alabama State Federation of Labor v. McAdory (1945) 325 US 450, 463, 89 L ed 1725, 1735, 65 S Ct 1384.

[3] This court frequently must determine the validity of state statutes that are attacked as unconstitutional interferences with the national power over interstate commerce. This appeal presents that question as to a statute that compels racial segregation of interstate passengers in vehicles moving interstate.[12]

The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as

said vehicle shall be liable for damages in any court."

[7] Morgan v. Commonwealth, *supra* (184 Va at p 37). Cf. Smith v. State (1898) 100 Tenn 494, 46 SW 566, 41 LRA 432; Alabama & V. R. Co. v. Morris (1912) 103 Miss 511, 60 So 11, Ann Cas 1915B 613; Southern R. Co. v. Norton (1916) 112 Miss 302, 73 So 1.

[8] Compare Hebert v. Louisiana (1926) 272 US 312, 317, 71 L ed 270, 273, 47 S Ct 103, 48 ALR 1102; General Trading Co. v. State Tax Commission (1944) 322 US 335, 337, 88 L ed 1309, 1311, 64 S Ct 1028, 1030.

[9] "Section 8. The Congress shall have power . . . to regulate Commerce with foreign nations, and among the several states, and with the Indian Tribes."

[10] Case v. Bowles, decided February 4, 1946 [— US —, 90 L ed —, 66 S Ct 438].

[11] Cf. Edwards v. California (1941) 314 US 160, 172, note 1, 86 L ed 119, 124, note 1, 62 S Ct 164.

[12] When passing upon a rule of a carrier that required segregation of an interstate passenger, this court said, "And we must keep in mind that we are not dealing with the law of a state attempting a regulation of interstate commerce beyond its power to make." Chiles v. Chesapeake & O. R. Co. (1910) 218 US 71, 75, 54 L ed 936, 938, 30 S Ct 667, 20 Ann Cas 980.

taxation or health or safety.[13] There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose.[14] Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation.[15] Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attemped enforcement of a statute brings about a specific determination as to whether or not the statute in quesion is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts.

[4] In the field of transportation, there have been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce.[16]

[13] Cf. Gwin, White & Prince v. Henneford (1939) 305 US 434, 439, 83 L ed 272, 276, 59 S Ct 325; Mintz v. Baldwin (1933) 289 US 346, 352, 77 L ed 1245, 1250, 53 S Ct 611; H. P. Welch Co. v. New Hampshire (1939) 306 US 79, 84, 83 L ed 500, 504, 27 PUR(NS) 238, 59 S Ct 438.

[14] Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 766, 771, 89 L ed 1915, 1922-1926, 59 PUR(NS) 211, 65 S Ct 1515.

[15] Cooley v. Port Wardens (1851) 12 How (US) 299, 319, 13 L ed 996, 1004; Minnesota Rate Cases (Simpson v. Shepard) (1913) 230 US 352, 402, 57 L ed 1511, 1542, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18; Kelly v. Washington ex rel. Foss Co. (1937) 302 US 1, 10, 82 L ed 3, 10, 58 S Ct 87.

[16] *Statutes or orders dealing with safety of operations:* Smith v. Alabama (1888) 124 US 465, 31 L ed 508, 8 S Ct 564, 1 Inters Com Rep 804 (Alabama statute requiring an examination and license of train engineers before operating in the state); Nashville, C. & St. L. R. Co. v. Alabama (1888) 128 US 96, 32 L ed 352, 9 S Ct 28, 2 Inters Com Rep 238 (Statute requiring examination of railroad employees as to vision and color blindness); New York, N. H. & H. R. Co. v. New York (1897) 165 US 628, 41 L ed 853, 17 S Ct 418 (N. Y. statute forbidding the use of furnaces or stoves in passenger cars and requiring guard-posts on railroad bridges); Erb v. Morasch (1900) 177 US 584, 44 L ed 897, 20 S Ct 819 (Municipal ordinance limiting speed of trains in city to 6 miles an hour); Atlantic Coast Line R. Co. v. Georgia (1914) 234 US 280, 58 L ed 1312, 34 S Ct 829 (Georgia statute requiring electric headlights on locomotives); Morris v. Duby (1927) 274 US 135, 71 L ed 966, 47 S Ct 548 (Weight restrictions on motor carriers imposed by order of Oregon Highway Commission); Sproles v. Binford, 286 US 374, 76 L ed 1167, PUR1932E 157, 52 S Ct 581 (Size and weight restrictions on trucks imposed by Texas statute); South Carolina State Highway Dept. v. Barnwell Bros. (1938) 303 US 177, 82 L ed 734, 58 S Ct 510 (Statute restricting weight and size of motor carriers); Maurer v. Hamilton (1940) 309 US 598, 84 L ed 969, 60 S Ct 726, 135 ALR 1347 (Pennsylvania statute forbidding the use of its highways to any vehicle carrying any other vehicle over the head of the operator of the vehicle); Terminal R. Asso. v. Brotherhood of Railroad Trainmen (1943) 318 US 1, 87 L ed 571, 47 PUR(NS) 500, 63 S Ct 420 (Ilinois statute requiring cabooses on freight trains).

Statutes or orders requiring local train service: Gladson v. Minnesota (1897) 166 US 427, 41 L ed 1064, 17 S Ct 627 (State statute requiring intrastate train to stop at county seat to take on and discharge passengers); Lake Shore & M. S. R. Co. v. Ohio ex rel. Lawrence (1899) 173 US 285, 43 L ed 702, 19 S Ct 465 (Statute requiring three trains daily, if so many are run, to stop at each city containing over 3,000 inhabitants as applied to interstate trains); Atlantic Coast Line R. Co. v. North Carolina Corp. Commission (1907) 206 US 1, 51 L ed 933, 27 S Ct 585, 11 Ann Cas 398 (Order regulating train service, particularly requiring train to permit connection with through trains at junction point); Missouri P. R. Co. v. Kansas ex rel. Taylor (1910) 216 US 262, 54 L ed 472, 30 S Ct 330 (Order directing the operation of intrastate passenger train service over specified route).

Statutes dealing with employment of labor —full crew laws: Chicago, R. I. & P. R. Co. v. Arkansas (1911) 219 US 453, 55 L ed

It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce.[17] Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by Federal courts to determine whether the burden makes the statute unconstitutional.[18] The courts could not invalidate Federal legislation for the same reason because Congress, within the limits of the Fifth Amendment, has authority to burden commerce if that seems to it a desirable means of accomplishing a permitted end.[19]

[5, 6] This statute is attacked on the ground that it imposes undue burdens on interstate commerce. It is said by the court of appeals to have been passed in the exercise of the state's police power to avoid friction between the races. But this court pointed out years ago "that a state cannot avoid the operation of this rule by simply invoking the convenient

290, 31 S Ct 275 (Arkansas full crew law applied to interstate trains); St. Louis, I. M. & S. R. Co. v. Arkansas (1916) 240 US 518, 60 L ed 776, 36 S Ct 443 (Arkansas full crew laws applied to switching crews); Missouri P. R. Co. v. Norwood (1931) 283 US 249, 75 L ed 1010, 51 S Ct 458, 30 NCCA 639 (Arkansas full crew laws applied to freight and switching crews).

[17] *Statutes or orders dealing with safety of operations:* Kansas City S. R. Co. v. Kaw Valley Drainage Dist. (1914) 233 US 75, 58 L ed 857, 34 S Ct 564 (Order requiring railroad to remove its bridges over river for flood control purposes); South Covington & C. Street R. Co. v. Covington, 235 US 537, 59 L ed 350, PUR1915A 231, 35 S Ct 158, LRA1915F 792 (Ordinances regulating the number of passengers to be carried in, the number of cars to be run and the temperature of an interstate street railway car invalid; those requiring rails on front and rear platform, ventilation and cleaning valid); Seaboard Air Line R. Co. v. Blackwell (1917) 244 US 310, 61 L ed 1160, 37 S Ct 640, LRA1917F 1184 (Georgia Blow Post Law requiring train to blow whistle and slow down almost to a stop at each grade crossing where numerous grade crossings were involved. Cf. Southern R. Co. v. King (1910) 217 US 524, 54 L ed 868, 30 S Ct 594, where answer held insufficient to permit proof of burden of the statute on interstate commerce); Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 89 L ed 1915, 59 PUR(NS) 211, 65 S Ct 1515 (Statute limiting number of cars in freight train to 70 and passenger cars to 14).

Statutes or orders requiring local train service: Illinois C. R. Co. v. Illinois ex rel. Butler (1896) 163 US 142, 41 L ed 107, 16 S Ct 1096 (Statute applied to require fast mail train to detour from main line in order to stop at station for the taking on and discharge of passengers); Cleveland, C. C. & St. L. R. Co. v. Illinois ex rel. Jett (1900) 177 US 514, 44 L ed 868, 20 S Ct 722 (Illinois statute requiring interstate train to stop at each station); Mississippi R. Commission v. Illinois C. R. Co. (1906) 203 US 335, 51 L ed 209, 27 S Ct 90 (Order of Commission requiring interstate train to stop at small town); Atlantic Coast Line R. Co. v. Wharton (1907) 207 US 328, 52 L ed 230, 28 S Ct 121 (South Carolina statute and Railroad Commission order requiring interstate train to stop at small town); St. Louis S. W. R. Co. v. Arkansas (1910) 217 US 136, 54 L ed 698, 30 S Ct 476, 29 LRA(NS) 802 (Statute and order requiring delivery of freight cars to local shippers); Herndon v. Chicago, R. I. & P. R. Co. (1910) 218 US 135, 54 L ed 970, 30 S Ct 633 (Statute requiring interstate train to stop at junction point); Chicago, B. & Q. R. Co. v. Railroad Commission, 237 US 220, 59 L ed 926, PUR1915C 309, 35 S Ct 560 (Wisconsin statute requiring interstate train to stop at villages containing 200 or more inhabitants); Missouri, K. & T. R. Co. v. Texas, 245 US 484, 62 L ed 419, PUR1918B 602, 38 S Ct 178, LRA1918C 535 (Order requiring trains to start on time and fixing time allowed for stops at junctions en route); St. Louis & S. F. R. Co. v. Public Service Commission, 254 US 535, 65 L ed 389, PUR1921B 504, 41 S Ct 192 (Order requiring through trains to detour through a small town); St. Louis-S. F. R. Co. v. Public Service Commission, 261 US 369, 67 L ed 701, PUR1923C 852, 43 S Ct 380 (Order requiring that interstate trains be stopped at small town).

[18] See Southern P. Co. v. Arizona ex rel. Sullivan, *supra*, 325 US at p 770, 89 L ed at p 1925.

[19] Compare United States v. Carolene Products Co. (1938) 304 US 144, 146, 82 L ed 1234, 1238, 58 S Ct 778.

apologetics of the police power."[20] Burdens upon commerce are those actions of a state which directly "impair the usefulness of its facilities for such traffic."[21] That impairment, we think, may arise from other causes than costs or long delays. A burden may arise from a state statute which requires interstate passengers to order their movements on the vehicle in accordance with local rather than national requirements.

On appellant's journey, this statute required that she sit in designated seats in Virginia.[22] Changes in seat designation might be made "at any time" during the journey when "necessary or proper for the comfort and convenience of passengers." This occurred in this instance. Upon such change of designation, the statute authorizes the operator of the vehicle to require, as he did here, "any passenger to change his or her seat as it may be necessary or proper."[23] An interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group. On arrival at the District of Columbia line, the appellant would have had freedom to occupy any available seat and so to the end of her journey.

Interstate passengers traveling via motors between the north and south or the east and west may pass through Virginia on through lines in the day or in the night. The large busses approach the comfort of Pullmans and have seats convenient for rest. On such interstate journeys the enforcement of the requirements for reseating would be disturbing.

Appellant's argument, properly we think, includes facts bearing on interstate motor transportation beyond those immediately involved in this journey under the Virginia statutory regulations. To appraise the weight of the burden of the Virginia statute on interstate commerce, related statutes of other states are important to show whether there are cumulative effects which may make local regulation impracticable. Eighteen states, it appears, prohibit racial separation on public carriers.[24] Ten require separation on motor carriers.[25] Of these Alabama applies specifically to interstate passengers with an exception for interstate passengers with through

[20] Kansas City S. R. Co. v. Kaw Valley Drainage Dist. (1914) 233 US 75, 79, 58 L ed 857, 859, 34 S Ct 564.

[21] Illinois C. R. Co. v. Illinois ex rel. Butler (1896) 163 US 142, 154, 41 L ed 107, 111, 16 S Ct 1096.

[22] The Virginia Code of 1942, § 67, defines a colored person, for the purpose of the Code, as follows: "Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person. . . ." Provisions for vital statistics make a record of the racial lines of Virginia inhabitants. Sections 1574 and 5099a.

[23] § 4097bb.

[24] Cal Civ Code (Deering) 1941, § 51–54; Colo Stat Anno 1935, chap 35, § 1–10; Conn Gen Stat (Supp 1933), § 1160b; Ill Rev Stat 1945, chap 38, § 125–128g; Ind Stat (Burns) 1933, § 10–901, 10–902; Iowa Code 1939, § 13251, 13252; Kan Gen Stat 1935, § 21–2424; Mass Laws (Michie) 1933, chap 272, § 98, as amended 1934; Mich Stat Anno 1938, § 28.343, 28.344; Minn Stat (Mason) 1927, § 7321; Neb Comp Stat 1929, § 23–101; NJ Rev Stat 1937, § 10:1–2 to 10:1–7; NY Civil Rights Law (McKinney), § 40–41; Ohio Code (Throckmorton) 1940, § 12,940–12,942; Pa Stat (Purdon), title 18, § 4654 to 4655; RI Gen Laws 1938, chap 606, § 28–29; Wash Rev Stat (Remington) 1932, § 2686 (semble); Wis Stat 1943, § 340.75.

[25] Ala Code, 1940, title 48, § 268; Ark Stat 1937 (Pope), § 6921–6927, Acts 1943, p 379; Ga Code 1933, § 68–616; La Gen Stat (Dart) 1939, § 5307–5309; Miss Code 1942, § 7785; NC Gen Stat 1943, § 62–109; Okla Stat Anno 1941, title 47, 201–210; SC Code 1942, § 8530–1; Tex Penal Code (Vernon), 1936, Art 1659; Va Code 1942, § 4097z–4097dd.

tickets from states without laws on separation of passengers.[26] The language of the other acts, like this Virginia statute before the court of appeals' decision in this case, may be said to be susceptible to an interpretation that they do or do not apply to interstate passengers.

In states where separation of races is required in motor vehicles, a method of identification as white or colored must be employed. This may be done by definition. Any ascertainable Negro blood identifies a person as colored for purposes of separation in some states.[27] In the other states which require the separation of the races in motor carriers, apparently no definition generally applicable or made for the purposes of the statute is given. Court definition or further legislative enactments would be required to clarify the line between the races. Obviously there may be changes by legislation in the definition.[28]

The interferences to interstate commerce which arise from state regulation of racial association on interstate vehicles has long been recognized. Such regulation hampers freedom of choice in selecting accommodations. The recent changes in transportation brought about by the coming of automobiles does not seem of great significance in the problem. People of all races travel today more extensively than in 1878 when this court first passed upon state regulation of racial segregation in commerce. The factual situation set out in preceding paragraphs emphasizes the soundness of this court's early conclusion in Hall v. De Cuir (1878) 95 US 485, 24 L ed 547.

The De Cuir Case arose under a statute of Louisiana interpreted by the courts of that state and this court to require public carriers "to give all persons traveling in that state, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color." 95 US at p 487. Damages were awarded against Hall, the representative of the operator of a Mississippi river steamboat that traversed that river interstate from New Orleans to Vicksburg, for excluding in Louisiana the defendant in error, a colored person, from a cabin reserved for whites. This court reversed for reasons well stated in the words of Mr. Chief Justice Waite.[29] As our previous discussion demonstrates, the transportation diffi-

[26] Ala Code 1940, title 48, § 268.

[27] Ala Code 1940, title 1, § 2; Ark Stat (Pope) 1937, § 1200 (separate coach law); Ga Code (Michie Supp) 1928, § 2177; Okla Const Art 23, § 11; Va Code (Michie) 1942, § 67.

[28] Compare Va Code 1887, § 49, providing that those who had one-fourth or more Negro blood were to be considered colored. This was changed in 1910 (Acts 1910, p 581) to read one-sixteenth or more. It was again changed in 1930 by Acts, 1930, p 97, to its present form, i. e., any ascertainable Negro blood. See note 22, *supra*.

[29] 95 US at 489, 24 L ed at 548:

"It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another.

culties arising from a statute that requires commingling of the races, as in the De Cuir Case, are increased by one that requires separation, as here.[30] Other Federal courts have looked upon racial separation statutes as applied to interstate passengers as burdens upon commerce.[31]

In weighing the factors that enter into our conclusion as to whether this statute so burdens interstate commerce or so infringes the requirements of national uniformity as to be invalid, we are mindful of the fact that conditions vary between northern or western states such as Maine or Montana, with practically no colored population; industrial states such as Illinois, Ohio, New Jersey, and Pennsylvania with a small, although appreciable, percentage of colored citizens; and the states of the deep south with percent-

Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if, on one side of a state line, his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved because he had been excluded on account of his color."

See Louisville, N. O. & T. R. Co. v. Mississippi (1890) 133 US 587, 590, 591, 33 L ed 784–786, 10 S Ct 348, 2 Inters Com Rep 801.

A regulation of the number of passengers on interstate streetcars was held invalid in South Covington & C. Street R. Co. v. Covington, 235 US 537, 547, 59 L ed 350, 354, PUR1915A 231, 35 S Ct 158, LRA1915F 792. This court said at pp 547, 548 of 235 US, PUR1915A at p 238:

"If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced, and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in Hall v. De Cuir (1878) 95 US 485, 489, 24 L ed 547, 548, 'commerce cannot flourish in the midst of such embarrassments.'"

[30] South Covington & C. Street R. Co. v. Kentucky (1920) 252 US 399, 64 L ed 631, 40 S Ct 378, relied upon by appellee, does not decide to the contrary of the holding in Hall v. De Cuir. In that case a carrier corporation was convicted in the Kentucky courts of violation of a state statute that required it to furnish cars with separate compartments for white and colored. It operated streetcars interstate over the lines of another corporation that owned tracks that were wholly intrastate. The court of appeals of Kentucky held the conviction good on the ground that the offending act was the operation of the intrastate railroad in violation of the state statute. It was said that the statute did not apply to an interstate passenger. South Covington & C. Street R. Co. v. Commonwealth (1919) 181 Ky 449, 454, 205 SW 603. The court of appeals referred, with continual approval, at that point to Chiles v. Chesapeake & O. R. Co. (1907) 125 Ky 299, 304, 101 SW 386, 11 LRA(NS) 268: "It is admitted that §§ 795–801 of the Kentucky Statutes, requiring all railroad companies to furnish separate coaches for transportation of white and colored passengers, and imposing upon the company and conductors a penalty for refusing or failing to carry out the provisions of the law, does not apply to appellant, who was an interstate passenger; it being conceded that the statute is only operative within the territorial limits of this state, and effective as to passengers who travel from one point within the state to another place within its border." This court accepted this application of the state statute and said it "is not a regulation of interstate commerce." 252 US at p 403, 64 L ed at p 634. Probably what was meant by the opinions was that under the Kentucky act the company with wholly intrastate mileage must operate cars with separate compartments for intrastate passengers.

[31] Anderson v. Louisville & N. R. Co. (1894) 62 Fed 46, 48, 4 Inters Com Rep 764; Washington, B. & A. Electric R. Co. v. Waller (1923) 53 App DC 200, 289 Fed 598, 30 ALR 50. See also Hart v. State (1905) 100 Md 595, 60 Atl 457; Carrey v. Spencer (1895) 72 NYSR 108, 36 NYS 886.

ages of from 25 to nearly 50 per cent colored, all with varying densities of the white and colored race in certain localities. Local efforts to promote amicable relations in difficult areas by legislative segregation in interstate transportation emerge from the latter racial distribution. As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for the races in interstate journeys result. As there is no Federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid.

Reversed.

Mr. Justice Rutledge concurs in the result.

Mr. Justice Jackson took no part in the consideration or decision of this case.

Mr. Justice BLACK concurring: The Commerce Clause of the Constitution provides that "Congress shall have power . . . to regulate commerce . . . among the several states." I have believed, and still believe that this provision means that Congress can regulate commerce and that the courts cannot. But in a series of cases decided in recent years this court over my protest has held that the Commerce Clause justifies this court in nullifying state legislation which this court concludes imposes an "undue burden" on interstate commerce.[1] I think that whether state legislation imposes an "undue burden" on interstate commerce raises pure questions of policy, which the Constitution intended should be resolved by the Congress.

Very recently a majority of this court reasserted its power to invalidate state laws on the ground that such legislation put an undue burden on commerce. Nippert v. Richmond (1946) — US —, 90 L ed —, 66 S Ct 586, 162 ALR 844; Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 89 L ed 1915, 59 PUR(NS) 211, 65 S Ct 1515. I thought then, and still believe, that in these cases the court was assuming the role of a "super-legislature" in determining matters of governmental policy. 325 US at p 787.

But the court, at least for the present, seems committed to this interpretation of the Commerce Clause. In the Southern P. Co. Case, the court, as I understand its opinion, found an "undue burden" because a state's requirement for shorter trains increased the cost of railroad operations and thereby delayed interstate commerce

[1] Nippert v. Richmond (1946) — US —, 90 L ed —, 66 S Ct 586, 162 ALR 844; Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 89 L ed 1915, 59 PUR (NS) 211, 65 S Ct 1515; McCarroll v. Dixie Greyhound Lines (1940) 309 US 176, 84 L ed 683, 60 S Ct 504; Gwin, White & Prince v. Henneford (1939) 305 US 434, 83 L ed 272, 59 S Ct 325; J. D. Adams Mfg. Co. v. Storen (1938) 304 US 307, 82 L ed 1365, 58 S Ct 913, 117 ALR 429.

and impaired its efficiency. In the Nippert Case a small tax imposed on a sales solicitor employed by concerns located outside of Virginia was found to be an "undue burden" even though a solicitor for Virginia concerns engaged in the same business would have been required to pay the same tax.

So long as the court remains committed to the "undue burden on commerce formula," I must make decisions under it. The "burden on commerce" imposed by the Virginia law here under consideration seems to me to be of a far more serious nature than those of the Nippert or Southern P. Co. Cases. The Southern P. Co. opinion, moreover, relied in part on the rule announced in Hall v. De Cuir (1878) 95 US 485, 24 L ed 547, 548, which case held that the Commerce Clause prohibits a state from passing laws which require that "on one side of a state line . . . passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate." The court further said that "uniformity in the regulations by which . . . [a carrier] . . . is to be governed from one end to the other of his route is a necessity in his business" and that it was the responsibility of Congress, not the states, to determine "what such regulations shall be." The "undue burden on commerce formula" consequently requires the majority's decision. In view of the court's present disposition to apply that formula, I acquiesce.

Mr. Justice FRANKFURTER, concurring: My brother Burton has stated with great force reasons for not invalidating the Virginia statute. But for me Hall v. De Cuir (1878) 95 US 485, 24 L ed 547, is controlling. Since it was decided nearly seventy years ago, that case on several occasions has been approvingly cited and has never been questioned. Chiefly for this reason I concur in the opinion of the court.

The imposition upon national systems of transportation of a crazy-quilt of state laws would operate to burden commerce unreasonably, whether such contradictory and confusing state laws concern racial commingling or racial segregation. This does not imply the necessity for a nationally uniform regulation of arrangements for passengers on interstate carriers. Unlike other powers of Congress (see Art 1, § 8, cl 1, concerning "Duties, Imposts and Excises"; Art 1, § 8, cl 4, concerning "Naturalization"; Art 1, § 8, cl 4, concerning "Bankruptcies"), the power to regulate commerce does not require geographic uniformity. Congress may devise a national policy with due regard to varying interests of different regions. E. g., [March 1, 1913] 37 Stat 699, chap 90, 27 USCA § 122, 6A FCA title 27, § 122; Clark Distilling Co. v. Western Maryland R. Co. (1917) 242 US 311, 61 L ed 326, 37 S Ct 180, LRA 1917B 1218, Ann Cas 1917B 845; [January 19, 1929] 45 Stat 1084, chap 79, 49 USCA § 60, 10A FCA title 49, § 60; Whitfield v. Ohio (1936) 297 US 431, 80 L ed 778, 56 S Ct 532. The states cannot impose diversity of treatment when such diverse treatment would result in unreasonable burdens on commerce. But Congress may effectively exercise its power under the Commerce Clause

without the necessity of a blanket rule for the country.

Mr. Justice BURTON, dissenting: On the application of the interstate commerce clause of the Federal Constitution to this case, I find myself obliged to differ from the majority of the court. I would sustain the Virginia statute against that clause. The issue is neither the desirability of the statute nor the constitutionality of racial segregation as such. The opinion of the court does not claim that the Virginia statute, regulating seating arrangements for interstate passengers in motor vehicles, violates the Fourteenth Amendment or is in conflict with a Federal statute. The court holds this statute unconstitutional for but one reason. It holds that the burden imposed by the statute upon the nation's interest in interstate commerce so greatly outweighs the contribution made by the statute to the state's interest in its public welfare as to make it unconstitutional.

The undue burden upon interstate commerce thus relied upon by the court is not complained of by the Federal government, by any state, or by any carrier. This statute has been in effect since 1930. The carrier concerned is operating under regulations of its own which conform to the statute. The statute conforms to the policy adopted by Virginia as to steamboats (1900), electric or streetcars and railroads (1902–1904).[1] Its validity has been unanimously upheld by the supreme court of appeals of Virginia. The argument relied upon by the majority of this court to establish the undue burden of this statute on interstate commerce is the lack of uniformity between its provisions and those of the laws of other states on the subject of the racial separation of interstate passengers on motor vehicles.

If the mere diversity between the Virginia statute and comparable statutes of other states is so serious as to render the Virginia statute invalid, it probably means that the comparable statutes of those other states, being diverse from it and from each other, are equally invalid. This is especially true under that assumption of the majority which disregards sectional interstate travel between neighboring states having similar laws, to hold "that seating arrangements for the different races in interstate motor travel require a *single, uniform rule to protect national travel.*" (Italics supplied.) More specifically, the opinion of the court indicates that the laws of the 10 contiguous states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Texas and Oklahoma require racial separation of passengers on motor carriers while those of 18 other states prohibit racial separation of passengers on public carriers. On the precedent of this case, the laws of the 10 states requiring racial separation apparently can be invalidated because of their sharp diversity from the laws in the rest of the Union, or, in a lesser degree, because of their diversity from one another. Such invalidation, on the ground of lack of nation-wide uniformity, may lead to questioning the validity of the

[1] Steamboats: Acts of 1900, p 340; electric or street cars: Acts of 1902–1904, p 990; railroads: Acts of 1902–1904, p 987. Va Code Ann 1942, §§ 4022–4025; 3978–3983; 3962–3969.

laws of the 18 states now prohibiting racial separation of passengers, for those laws likewise differ sharply from laws on the same subject in other parts of the Union and, in a lesser degree, from one another. In the absence of Federal law, this may eliminate state regulation of racial separation in the seating of interstate passengers on motor vehicles and leave the regulation of the subject to the respective carriers.

The present decision will lead to the questioning of the validity of statutory regulation of the seating of intrastate passengers in the same motor vehicles with interstate passengers. The decision may also result in increased lack of uniformity between regulations as to seating arrangements on motor vehicles limited to intrastate passengers in a given state and those on motor vehicles engaged in interstate business in the same state or on connecting routes.

The basic weakness in the appellant's case is the lack of facts and findings essential to demonstrate the existence of such a serious and major burden upon the national interest in interstate commerce as to outweigh whatever state or local benefits are attributable to the statute and which would be lost by its invalidation. The court recognizes that it serves as "the final arbiter of the competing demands of state and national interests"[2] and that it must fairly determine, in the absence of Congressional action, whether the state statute actually imposes such an undue burden upon interstate commerce as to invalidate that statute. In weighing these competing demands, if this court is to justify the invalidation of this statute, it must, first of all, be satisfied that the many years of experience of the state and the carrier that are reflected in this state law should be set aside. It represents the tested public policy of Virginia regularly enacted, long maintained and currently observed. The officially declared state interests, even when affecting interstate commerce, should not be laid aside summarily by this court in the absence of Congressional action. It is only Congress that can supply affirmative national uniformity of action.

In Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 768–770, 89 L ed 1915, 1924, 1925, 59 PUR(NS) 211, 216–218, 65 S Ct 1515, this court speaking through the late Chief Justice said:

"In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases, in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved.[3]

. . . . . .

"But in general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because

[2] Southern P. Co. v. Arizona ex rel. Sullivan (1945) 325 US 761, 769, 89 L ed 1915, 1924, 59 PUR(NS) 211, 65 S Ct 1515.

[3] See Parker v. Brown (1943) 317 US 341, 362, 87 L ed 315, 332, 63 S Ct 307; Di Santo v. Pennsylvania (1927) 273 US 34, 44, 71 L ed 524, 530, 47 S Ct 267.

it has appreciated the destructive consequences to the commerce of the nation if their [i.e. the courts'] protection were withdrawn, . . . and has been aware that in their application *state laws will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment.*[4] . . . Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our constitutional system. There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern." (Italics supplied.)

The above-quoted requirement of a factual establishment of "a sure basis" for an informed judgment by this court calls for a firm and demonstrable basis of action on the part of this court. In the record of this case there are no findings of fact that demonstrate adequately the excessiveness of the burden, if any, which the Virginia statute has imposed upon interstate commerce, during the many years since its enactment, in comparison with the resulting effect in Virginia of the invalidation of this statute.[5] The court relies largely upon the recital of a nation-wide diversity among state statutes on this subject without a demonstration of the factual situation in those states, and especially in Virginia. The court therefore is not able in this case to make that necessary "appraisal and accommodation of the competing demands of the state and national interests involved" which should be the foundation for passing upon the validity of a state statute of long standing and of important local significance in the exercise of the state police power.

The court makes its own further assumption that the question of racial separation of interstate passengers in motor vehicle carriers requires national uniformity of treatment rather than diversity of treatment at this time. The inaction of Congress is an important indication that, in the opinion of Congress, this issue is better met without nationally uniform affirmative regulation than with it. Legislation raising the issue long has been, and is now, pending before Congress but has not reached the floor of either House.[6] The fact that 18 states have prohibited in some degree racial separation in public carriers is important progress in the direction of uniformity. The fact, however, that 10 con-

[4] Terminal R. Asso. v. Brotherhood of Railroad Trainmen (1943) 318 US 1, 8, 87 L ed 571, 577, 47 PUR(NS) 500, 63 S Ct 420.

[5] Hall v. De Cuir (1878) 95 US 485, 24 L ed 547, does not require the conclusion reached by the court in this case. The Louisiana statute in the De Cuir Case could have been invalidated, at that time and place, as an undue burden on interstate commerce under the rules clearly stated by Chief Justice Stone in Southern P. Co. v. Arizona ex rel. Sullivan, *supra*, and as applied in this dissenting opinion. If the De Cuir Case is followed without weighing the surrounding facts it would invalidate today statutes in New England states prohibiting racial separation in seating arrangements on carriers, which would not be invalidated under the doctrine stated in the Arizona Case.

[6] See HR 8821, 75th Cong 3d Sess 83 Cong Rec 74; HR 182, 76th Cong 1st Sess 84 Cong Rec 27; HR 112, 77th Cong 1st Sess 87 Cong Rec 13.

tiguous states in some degree require, by state law, some racial separation of passengers on motor carriers indicates a different appraisal by them of the needs and conditions in those areas than in others. The remaining 20 states have not gone equally far in either direction. This recital of existing legislative diversity is evidence against the validity of the assumption by this court that there exists today a requirement of a single uniform national rule on the subject.

It is a fundamental concept of our Constitution that where conditions are diverse the solution of problems arising out of them may well come through the application of diversified treatment matching the diversified needs as determined by our local governments. Uniformity of treatment is appropriate where a substantial uniformity of conditions exists.

CALIFORNIA RAILROAD COMMISSION

William Michel

v.

Pacific Telephone & Telegraph Company et al.

Decision No. 38787, Case No. 4790
March 26, 1946

PETITION *for enlargement of telephone exchange area to include portion of exchange area of a second telephone corporation; dismissed.*

Service, § 63 — Commission power — Service discontinuance — Reëstablishment of telephone exchange areas.

The Commission, in passing upon a petition to readjust established service areas of two separate telephone corporations, may not properly direct one or the other company, without its consent, to discontinue service within a given area unless the legal authority for such action clearly appears.

Service, § 445 — Telephones — Reëstablishment of exchange boundaries.

Statement that the Commission has not looked favorably upon the reëstablishment of telephone exchange boundaries unless it appeared that by this means only could satisfactory service be afforded the greatest number of subscribers at reasonable cost, p. 190.

APPEARANCES: Iener W. Nielsen and Milo Popovich, for complainant; Lawrence W. Young, for defendant Kerman Telephone Company;

James G. Marshall, for defendant, The Pacific Telephone and Telegraph Company; Frank V. Rhodes, for California Independent Telephone Association, Sanger Telephone Company, Kerman Telephone Company, Raymond Telephone Company, and San Joaquin Associated Telephone Company; Richard D. Crowe, for Dos Palos Telephone Company.

By the COMMISSION: In this complaint William Michel, with other residents in the northeastern section of the Kerman exchange, Fresno county, request that the Commission order the enlargement of the Fresno exchange area of The Pacific Telephone and Telegraph Company to include therein a portion of the Kerman exchange area of Kerman Telephone Company. Both of these defendants object to any alteration of the existing boundary between the two exchanges.

A public hearing in this proceeding was held before examiner Wessells at Kerman on October 17, 1945. That hearing was well attended by residents and telephone users interested in this proceeding. The matter was submitted on briefs.

Kerman Telephone Company owns and operates a telephone system serving the unincorporated territory in Fresno county known as the Kerman-Biola Vinland Tract, including the towns of Kerman and Biola. This company operates one exchange only, the Kerman exchange, which contains about 128 square miles of territory, includes 130 miles of pole line and 374 stations. Continuous 24-hour service is provided under magneto manual operation.

The territory in Kerman exchange within which the complainants desire Pacific Company to furnish service is set forth in Exhibit 1 and may be termed "disputed area." This area is primarily agricultural in character. It includes approximately 14 square miles of territory lying generally east of Kerman and Biola and approximately 11 miles west of downtown Fresno. It is approximately 1/11 of the total area served by Kerman Company and it contains over 200 homes, includes 9 miles of telephone pole line, and 14 telephone stations.

Fresno exchange is owned and operated by the Pacific Company. That exchange serves in excess of 33,000 stations in an area of approximately 321 square miles, including downtown Fresno and adjacent territory within Fresno and Madera counties. Continuous 24-hour service is provided under dial operation.

The question of the rights of Kerman Company and Pacific Company to furnish service within the disputed area has been before the Commission several times. On April 29, 1922, Kerman Company filed its Application No. 7807 for a certificate covering the extension of its service into the town of Biola and adjacent territory which includes the disputed area. It appears that Kerman Company occupied the territory as early as 1915 and that in 1919 Pacific Company purchased the farmers' portion of a line which had been constructed about 1911, connected to Fresno and served some subscribers in the disputed area and elsewhere in and around Biola.

At the hearing in the 1922 proceeding, it was indicated seventy-nine business firms and residents of Biola

and vicinity desired Pacific Company service furnished from a local exchange. Kerman Company's application was denied, the Commission ordering Kerman Company not to discontinue its service within the territory until authorized so to do by supplemental order and expressing its opinion that Pacific Company should establish a separate exchange at Biola. (Decision No. 10905, PUR1923A 413.) That decision was affirmed on rehearing. (Decision No. 11308, dated December 5, 1922.)

Owing to the fact the boundary lines proposed for the Biola exchange to be established by Pacific Company were not satisfactory to residents of the territory and adjacent areas, 126 of them signed a petition requesting that the matter be reopened. On March 19, 1923, Kerman Company presented that petition to the Commission and renewed its request for a certificate covering the extension of its service into Biola and adjacent territory. (Application No. 8813.)

By Decision No. 12398, dated July 27, 1923, Kerman Company was issued a certificate as applied for, and the boundary between Kerman and Fresno exchanges was fixed at 500 feet west of Dickerson avenue, the present boundary. Pacific Company was authorized to discontinue its service west of that boundary line and Kerman Company was authorized to discontinue its service east of that line. That decision indicates that at the hearing held in Kerman on May 9, 1923, numerous witnesses expressed the same desire to have the entire Kerman and Biola district served from one exchange and Pacific Company stated its agreement to establishing Dickerson avenue as the boundary between the services of the two companies.

On September 2, 1924, J. J. Becker applied to the Commission for a change in the boundary line between the Fresno and Kerman exchanges. (Application No. 10443.) A petition containing the signatures of 101 persons desiring the service of Pacific Company was presented. The Commission, by Decision No. 14235, dated November 3, 1924, refused to grant the petition.

The Kerman-Fresno exchange boundary has remained unchanged from 1924 up to the present time. On May 1, 1945, the Commission received a petition in which 166 residents in the disputed area requested the inclusion of the territory in Fresno exchange and 109 residents requested service from the Pacific Company. That petition was followed several months later by the formal complaint in this proceeding.

Testimony was given on behalf of the complainants by three subscribers to Kerman service and by five others who were not subscribers. The testimony of A. E. Sciacqua, who resides in the disputed area, shows that he took a leading part in circulating several petitions introduced at the hearing as Exhibits 2, 3, and 4. He stated he had never been a subscriber to Kerman Company service and that his primary business was with Fresno and not with Kerman. He, together with four other non-subscribers and three Kerman Company subscribers, testified concerning unsatisfactory telephone service furnished by Kerman Company involving primarily slow answer by the operator and noisy

lines. It was stipulated that sixty-six residents of the disputed area who signed the petitions referred to above would testify substantially the same as A. E. Sciacqua.

Opposed to the requested transfer of territory, two Kerman subscribers in the disputed area testified that they desired to continue Kerman service. These two witnesses, together with six additional subscribers to Kerman Company service, stated that their telephone service was satisfactory. The president of the Kerman Chamber of Commerce and the editor of the Kerman News, the local newspaper, expressed the view that the removal of the disputed area from the Kerman exchange would be injurious to the town of Kerman as well as to the surrounding territory. Mr. Voorhees, a businessman of Biola, stated that the transfer of territory would jeopardize the business of Biola and its expansion.

Thomas A. Dawson, president and manager of Kerman Company, gave testimony concerning the general service conditions at Kerman and listed the service improvements which he had made subsequent to the date he had acquired stock ownership of Kerman Company. He outlined a program for further improvements to be made, particularly for Biola and adjacent territory, including the disputed area. He stated that he had made 29 new telephone installations and replaced 12, resulting in the replacement of 45 poles and 22,000 feet of drop wire and the construction of five miles of pole line. He has 59 orders for service which must be held awaiting availability of materials. Dawson testified that a dial switching unit costing approximately $4,000 has been ordered for installation at Biola and that he plans to establish a base rate area at Biola as part of Kerman Company's service improvement program. He stated the entire program involves an expenditure of approximately $10,000.

Telephone service is available in the disputed area from the Kerman exchange at local exchange rates and from the Fresno exchange on a foreign exchange basis.[1] Toll telephone and telegraph services also are available between the Kerman exchange, including the disputed area, and the Fresno exchange as well as other toll telephone and telegraph points in California and elsewhere.

Testimony was presented as to the rates which would apply for service if the territory were transferred to the Frenso exchange. Individual, 2- and 4-party line grades of service are furnished in the base rate area of the Kerman exchange at a rate level lower than that effective in the base rate area of the Fresno exchange. Suburban 10-party line service is furnished outside the base rate areas without mileage charges. For the higher grades of service furnished outside the Kerman and the Fresno base rate areas, airline mileage charges are added to the base rates as follows: Individual line, each quarter mile or fraction, 50 cents; 2-party line, 35 cents; and 4-party line service, 25 cents per quarter mile per month. As the airline distance from the Kerman base rate area boundary

[1] Rates for Fresno residence suburban foreign exchange service were filed by Kerman Company on August 21, 1945, and became effective on September 21, 1945.

to the disputed area generally is much less than the distance from the Fresno base rate area boundary to the disputed area, it follows that the mileage charges added to Kerman base rates would be considerably less than such charges added to Fresno base rates.

Foreign exchange Fresno residence 10-party service recently has been offered jointly by the two utilities to residents of the disputed area as well as to others within the Kerman exchange. One subcribing to this type of service would be connected directly to the Fresno exchange, receive a Fresno number, and be able to call a Fresno subscriber without the payment of a toll charge. However, such a foreign exchange subscriber would pay a toll charge if he called a number in the Kerman exchange, just as other Fresno subscribers now have to pay such toll charges under present rates. The charge for foreign exchange Fresno residence 10-party wall set service is the Fresno residence 10-party exchange rate of $3 a month, plus mileage inside the Kerman exchange at a rate of 25 cents a quarter mile for the first 2 quarter miles, and 50 cents for each additional quarter mile. Accordingly, the rate for this foreign exchange service in the disputed area would vary from $3.25 to $6.50 a month, depending upon the distance a subscriber's premises were removed from the common exchange boundary.

Toll rates applicable to Fresno calls made by a Kerman subscriber who does not desire the above-described foreign exchange service are as follows: Station-to-station 15 cents for the first five minutes and 5 cents for each additional two minutes; and person-to-person, 20 cents for the first three minutes and 5 cents for each additional minute.

An illustration of the effect on subscribers' charges at approximately the midpoint of the disputed area under the requested Fresno service is set forth in the tabulation following:

Exchange Service Charges Per Month With a Wall Set Station Applicable at Approximately the Midpoint of the Disputed Area *

Class and Grade of Service	Under Present Kerman Rates	Under Fresno Rates If Territory Were Transferred	Amount Fresno Exceeds Kerman
Business Service			
Individual line	$13.25	$21.50	$8.25
Two-party line	9.60	15.95	6.35
Four-party line	5.25#	**	**
Suburban 10-party line	2.25	3.50	1.25
Residence Service			
Individual line	12.75	19.00	6.25
Two-party line	9.35	13.70	4.35
Four-party line	7.00	10.00	3.00
Suburban 10-party line	2.00	3.00	1.00

* Intersection of Dakota and Jameson avenues.
** Business 4-party line service is not offered in Fresno.
# Biola special rate plus mileage.

From the above comparison, it is clear that the transfer of the disputed area to Fresno exchange would result in higher monthly charges for service furnished at approximately the midpoint of the area ranging from

$1 to $8.25. A difference in monthly charge of $1, for example, would permit a Kerman subscriber to place 6⅔ 5-minute station-to-station toll calls a month to Fresno. Similarly, a differential of $8.25 would permit a Kerman subscriber to place 55 toll calls to Fresno a month. If the requested transfer of the disputed area were made, subscribers in the area would have their toll charges to Fresno numbers eliminated, but they would pay higher exchange monthly charges and they would also pay toll charges on calls placed to Kerman numbers.

An analysis made of the actual toll usage to Fresno of twelve subscribers in the disputed area for the 30-day period, June 21 to July 20, 1945, indicates the following results: Three subscribers placed no calls to Fresno, two subscribers placed 3 calls each, one subscriber placed 9 calls, another placed 10, two placed 18 calls each, another placed 19 calls, while the remaining two subscribers placed 30 and 48 calls, respectively, to Fresno.

In establishing the limits of a given telephone exchange area, the Commission has always endeavored to so fix the boundaries as to best serve the majority of those using telephone service. However, it is inevitable that either at the time exchange areas are established or thereafter as population changes take place, some subscribers within the area would better be served were they afforded direct connections with a neighboring exchange. To meet such a need by particular telephone users, foreign exchange service has been made available. The Commission has not looked favorably upon the reëstablishment of exchange boundaries unless it appeared that by this means only could satisfactory service be afforded the greatest number of subscribers at reasonable cost. When the issue raised involves a proposed readjustment of the established service areas of two separate telephone corporations, the Commission may not properly direct one or the other company, without its consent, to cease furnishing telephone service within a given area unless the legal authority for such action clearly appears.

Upon the record made in the instant complaint, the Commission cannot conclude that an order, directing a part of the Kerman exchange be added to the Fresno exchange of the Pacific Company, would really afford a more satisfactory telephone service to the majority of the subscribers of the Kerman Company. The evidence presented by the complainants related to a considerable extent to their dissatisfaction with the quality of the service now supplied by this company. However, the evidence does not reveal that the Kerman Company cannot provide reasonably adequate facilities to supply satisfactory service at reasonable rates, to the majority of the residents within the disputed area. To grant the request of the plaintiffs at this time would in fact not be of material aid to them in obtaining telephone service for the reason that there would be indefinite delay on the part of the Pacific Company to make the requisite installations. Although there would also be some delay on the part of the Kerman Company in carrying to completion its program of improving service, the Commission

will expect this company to proceed as rapidly as possible to make such changes as are necessary to provide adequate telephone service and to furnish the Commission periodic reports of its progress.

WASHINGTON DEPARTMENT OF TRANSPORTATION

Re Carl Meyers

Order M. V. No. 44386, Hearing No. 3769
April 29, 1946

APPLICATION *for authority to conduct interstate motor carrier service over state highways; granted.*

Interstate commerce, § 52 — State powers — Interstate motor carrier operation.
The state Commission may not deny a permit to use the state highways, for interstate commerce, to a person who has received a certificate from the Interstate Commerce Commission and whose equipment and drivers measure up to the safety standards of the state and conform to its laws relative to equipment on the highways, on the ground that the applicant has been violating state laws relative to operating without a permit.

By the DEPARTMENT: This matter came on regularly for hearing at Longview, Washington, on February 14, 1946, pursuant to notice duly given, before Wallace G. Mills, examiner; E. E. Stoddard, reporter.

The parties were represented as follows:

Applicant: Carl Meyers, by William B. Adams, Attorney, Portland.

Protestants: No appearance.

History of Proceeding

By application filed October 20, 1945, Carl Meyers of Portland, Oregon, sought a permit to operate as a common carrier by motor vehicle in dump truck operations in intrastate commerce in Clark, Cowlitz, and Skamania counties, and for interstate authority as a carrier of road building materials between points and places in Clatsop, Columbia, Washington, Multnomah, Hood River, Wasco, Sherman, Morrow, Gilliam, and Umatilla counties, Oregon, and Pacific, Clark, Wahkiakum, Klickitat, Benton, and Walla Walla counties, Washington.

The application was referred to Wallace G. Mills, Examiner, for hearing, and the hearing was held as above stated. Immediately prior to the hearing applicant moved to amend his application by striking therefrom that portion of the application in which he seeks to engage in intrastate service in the state of Washington. The matter was heard, therefore, only on his application for a permit to operate over the highways of the state of Washington in interstate commerce.

Findings of Fact

By uncontradicted evidence applicant showed that he had received a certificate of convenience and necessity from the Interstate Commerce Commission for the same authority sought herein by his amended application. He further showed by uncontradicted testimony that the equipment which he owns and which he will use over the highways of the state of Washington, is in good condition and not of such weight or size as to damage the highways of this state. He further showed by uncontradicted testimony that his drivers are experienced and qualified drivers holding all necessary permits and licenses entitling them to operate vehicles over the highways of this state. Evidence was adduced by the Department over the objection of applicant as to its relevancy that applicant had on numerous occasions violated the laws of the state of Washington in that he had operated over the highways without having received a permit from the department so to do.

Conclusions

Based upon the foregoing findings of fact, there is only one question to be decided, which is a question of law, namely, may a state Commission or Department refuse to grant a permit to use the highways of the state for interstate commerce to a person who has received a certificate from the Interstate Commerce Commission, and whose equipment and drivers measure up to the safety standards of the state and conform to its laws relative to equipment on the highways, on the ground that the person so seeking a permit has been in violation of state laws relative to operating without a permit. We have been able to find only one case directly bearing on this question. The United States District Court of the Western District of Missouri, Central Division, in the case of Atlantic-Pacific Stages v. Stahl, PUR 1930B 411, 36 F2d 260, states the rule to be that the police power of a state in a case of this kind extends only to safeguarding the highways of the state, and persons using these highways. The court specifically held that a state Commission could not deny a permit to engage in interstate commerce to one who had already received a certificate from the Interstate Commerce Commission on the grounds that the applicant had been, and was, in violation of the laws of the state in respect to operating without a permit from the state.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

$18,445,740 Program Proposed By Consumers Power

CONSUMERS POWER COMPANY estimates that it will spend approximately $18,445,740 on construction during 1946. Of this amount, $10,857,640 will be used by the electric department, and $5,308,100 by the gas department. The remainder will be used by the heating and water departments, and for miscellaneous projects, such as the purchase of automobiles, trucks, automotive equipment, office equipment, and additions to office and service buildings.

The electric department has many of its projects under way, including line extensions for new rural and urban customers which will account for $4,480,000. Also in progress now is the installation of facilities providing for increased power supply at Alma, Carson City, Jackson, Adrian, Hillsdale, Battle Creek, Mendon-Colon-Leonidas, Bellevue, Long Lake, Bridgeport, Montrose, Dewitt, Albion, Hastings-Charlotte, Kalamazoo Lakes, Grand Rapids, South Grand Rapids, Grand Rapids-Saugatuck-Pullman area, North Muskegon, Fremont, Reed City, Cadillac-McBain, and Manistee.

Among the new projects proposed by the electric department is the installation of facilities to increase the power supply in the Saginaw, Hanover, Ceresco, and Jackson areas, at a cost of $116,000. Also contemplated are additions and improvements at various transmission substations at a cost of $46,000, and the installation of transformers, regulators, and other additions and improvements at distribution substations which will account for $51,100.

The gas department also has started a large portion of its program, including the installation of facilities to increase gas supply at the Mt. Pleasant, Jackson, Lansing, and Pontiac divisions. Additions, extensions, and improvements to existing distribution systems, including mains, regulators, and meters, are in progress also. In addition, proposed improvements to natural gas production plants and gathering facilities for the Hatton, Winterfield, Cranberry, and other gas fields are contemplated at an estimated cost of $143,000.

Silex Appointment

APPOINTMENT of George W. Garvin as special assistant to the president was announced recently by Frank E. Wolcott, president of The Silex Company.

Mr. Garvin will assist Mr. Wolcott in the planning and execution of the Silex expansion program which involves production and distribution of new products now in the various stages of research and testing, as well as the present line of Silex coffee makers, filters, and steam irons for home and commercial use.

Dallas Power & Light Plans $3,270,000 Program

A $3,270,000 expansion to increase power output of its Mountain Creek plant by about 50 per cent has been proposed by the Dallas Power & Light Company, Dallas, Texas. The expansion involves installation of a third turbo-generator of 30,000 kilowatt capacity to add to the 31,250 and 30,000 kilowatt generating units already in operation at Mountain Creek. It is scheduled to be put into operation by June 1, 1949.

The estimate of power demand is based on a population expectancy of 525,000 for Greater Dallas in 1950. In the peak-load season of

(*Continued on page 26*)

1949, the company said, demand is expected to reach 154,000 kilowatts, which is 6,000 more than its Mountain Creek and Griffin street plants can now produce.

Illinois Power Plans Large New Plant

THE ILLINOIS POWER COMPANY has applied for authority to build a $17,000,000 generating plant near Alton to furnish electricity in southern Illinois.

The plant will be on a site of about 100 acres, now farm land. Two or three years will be required for construction.

Three 40,000 kilowatt steam turbine generating units are planned, capable of possible production of about 1,000,000,000 kilowatt hours a year. This output would serve the area extending from the vicinity of St. Louis to points beyond Hillsboro, Mount Vernon, and Sparta.

Marmon-Herrington Company Elects Four New Directors

ARTHUR W. HERRINGTON, chairman of the board of directors of the Marmon-Herrington Company, Indianapolis, Indiana, has announced that David M. Klausmeyer, C. Alfred Campbell, Guy C. Dixon, and Earl J. Breech were elected to the board of directors at a recent meeting of the stockholders of that company.

The election of these four men increases to eight the number of members on the board of directors of the Marmon-Herrington Company. Other members are Arthur W. Herrington, chairman, Bert Dingley, Robert C. Wallace, and William P. Nottingham.

David M. Klausmeyer, who succeeded Bert Dingley as president of the Marmon-Herrington Company on July 1st of this year, is exceptionally well qualified for this important position. A mechanical engineer by profession, he has been identified with the automotive industry all of his business life. Mr. Klausmeyer joined Marmon-Herrington after 22 years with the Chevrolet division of General Motors Corporation.

C. Alfred Campbell has a national reputation as an automotive sales, advertising, and sales promotion engineer. He joined the Marmon-Herrington Company in 1937 as general sales director, and in 1942 he was elected vice president of the company and placed in direct charge of all sales, advertising, and public relations. For 11 years prior to joining the Marmon-Herrington Company, he was with the Stutz Motor Car Company as sales manager and member of the board of directors. Previously he was with the Nordyke & Marmon Company, manufacturers of the Marmon automobile. Mr. Campbell graduated from Ohio State University in 1920. He also attended Sorbonne University in Paris, France, and holds degrees of Bachelor of Civil Engineering and Bachelor of Arts.

Guy C. Dixon first became associated with the Marmon-Herrington Company in 1942, as auditor, and was appointed treasurer of the

(*Continued on page 28*)

company early in 1945. Mr. Dixon has been engaged in accounting and bsuiness administrative work throughout his entire career.

Earl J. Breech joined the Merz Engineering Company, wholly-owned subsidiary of Marmon-Herrington, as treasurer and director in 1940, and on January 1, 1945, was advanced to general manager of the company. Mr. Breech has a background of 30 years in virtually all phases of business administration and accounting.

Operating in a greatly expanded plant, and having on its books the largest volume of commercial orders in its entire history, the Marmon-Herrington Company is now swinging into production on its postwar products. These include, in addition to its world-famous heavy-duty all-wheel-drive trucks and all-wheel-drive converted Ford trucks, a unique front-wheel-drive delivery vehicle, known as the DeliVr-all, and a line of new and improved trolley coaches.

$7,500,000 Construction Program Started

VIRGINIA ELECTRIC & POWER COMPANY will start work immediately on the construction of a 60,000 kilowatt steam power plant near Dumfries, located on the Potomac river at the junction of Quantico Creek and the river according to an announcement by Jack G. Holtzclaw, president.

About two years will be required to complete the project, President Holtzclaw said. It will represent an expenditure of about $7,500,000 and the new plant will be almost a duplicate of the Chesterfield station which was completed during the war.

New Substations, Highlines Planned by Bonneville

BONNEVILLE Power Administration is planning the immediate construction of approximately 260 miles of high-voltage lines, three new substations, and substantial additions at two existing substations in the north-central Washington area. According to a Bonneville announcement, part of this work already is under way and the remainder is scheduled for starting within the next twelve months.

New projects already under way or scheduled for the immediate future include a 166-mile, 230,000-volt line from Grand Coulee to Snohomish, Washington; 115,000-volt lines from Bonneville's Columbia substation to Ephrata and Moses Lake, from the Columbia substation to Ellensburg, and from Foster Creek to Brewster. A new switching station will be located at Brewster, and substations will be constructed at Ephrata and Moses Lake. Additional facilities also will be installed at Bonneville's existing substations at Columbia and Ellensburg.

Total cost of the new lines and substations will be approximately eight million dollars, it is reported.

Stacey-Dresser to Erect Propane-air Plant

AWARD of a contract from the Cincinnati Gas and Electric Company to handle the engineering and supervision of erection of what will be the fourth largest propane-air plant in the gas utility industry is announced by E. A. Flaschar, general manager of Stacey-Dresser Engineering, a division of Stacey Bros. Gas Construction Company, one of the Dresser Industries.

According to Mr. Flaschar, other similar Stacey-Dresser propane-air plants now in the process of erection include the five largest installations in the country and will serve the gas utilities in Columbus, Detroit, Toledo, Boston, and Binghamton, New York.

Hartford Gas Plans Expansion Program

HARTFORD GAS COMPANY has applied for authority to borrow $1,000,000 for a plant expansion program.

The company increased its volume of sales of gas in the last five years by 31 per cent. This increased business necessitates extensive plant improvements.

Rural Electrification Award by Thomas W. Martin Resumed

THE Prize Awards Committee of the Edison Electric Institute has announced the resumption of the Thomas W. Martin Rural Electrification Award, which was suspended during the war years.

Offered annually again by Thomas W. Martin, president of the Alabama Power Company, to the electric operating company which makes the greatest contribution to the progress of rural electrification and agricultural advancement, the award, since its establishment in 1932, has been a coveted token of distinction in the rural electrification field. In that year, 1932, electricity was serving approximately a half million farms, and rural electrification was just emerging from the necessary pioneering stage, instituted and carefully developed by the business-managed electric companies. In the intervening fourteen years, electrified farm homes have passed the three million mark, nearly two million of them being served by the privately operated utilities.

The gradual easing of wartime shortages of manpower and line construction materials is implementing the aggressive program of utilities to bring electricity to the farmer and one result of this should be unusually keen competition for the award this year, according to H. M. Sawyer, chairman of the Prize Awards Committee. If all agencies concerned with rural electrification continue with their present rate of growth, Mr. Sawyer said, the big job of connecting farmers to electric lines is expected to be almost completed by the end of 1948.

Mr. Martin, the donor of the award, has long

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G.E. Announces A NEW FULL COLOR MOVIE

THIS new full-color sound movie takes its audience into fifteen different industrial plants and shows how costs are cut by resistance welding. It illustrates by animated sketches the principles and uses of three types of resistance welding—spot, projection, and seam. It contains many pointers for making more effective use of this method of joining metals, of equal interest to beginners and "old-timers" in its use.

Backing up this G-E film is an 80-page manual for your power sales engineers that will add confidence and conviction to their discussion of resistance welding with customers. You benefit both from the opportunity to plan new installations in cooperation with your customers, and from the increased industrial prosperity which the diversified use of resistance welding will bring.

To round out the program, G.E. supplies a 12-page reminder bulletin which reiterates the key points of interest for those who have seen the film.

Your local G-E representative will gladly co-operate with you in making plans for showings of this and other MORE POWER TO AMERICA programs. *Apparatus Dept., General Electric Company, Schenectady 5, New York.*

Free Booklet gives full details on this and other MPA visual presentations. Summarizes all current programs. Gives prices and ordering instructions for films, manuals, and booklets. Tells of coming releases. Write for GES-3403.

GENERAL ELECTRIC

201-13SR-170

been known throughout the utility industry for his intense interest in rural electrification, and he and his company have been pioneers in active efforts to bring electric service to the rural people of Alabama. Indicative of the rural electrification programs of electric companies throughout the country is that of Mr. Martin's own company which has begun construction of an additional 6,500 miles of rural lines. When completed, these lines will make service available to approximately 95 per cent or more of the farms in the company's service area.

Companies submitting entries for the Martin award will be judged on the following points: Agricultural progress made within the company's territory, due to uses of electricity; development of the use of electric service on rural lines; coöperation with other agencies; extension of rural lines; and organization erosion programs, which may or may not require the use of electricity, but will help raise farming and living standards in the area.

Details of the terms and conditions of the Martin award may be obtained from the Prize Awards Committee of the Edison Electric Institute, 420 Lexington avenue, New York 17, New York.

H. H. Walker, Inc., to Build 56-mile Transmission Line

A $281,760 contract to build the 56-mile Oroville to Sacramento section of a 230-kilovolt transmission line from Oroville to Tracey, California, on the Central Valley Reclamation project has been awarded to H. H. Walker, Inc., of Los Angeles, by the Bureau of Reclamation.

The contract covers the construction of a three-phase transmission line, extending from Oroville terminus of the existing Shasta-Oroville transmission line to the county line between Placer and Sacramento counties, approximately 14 miles northeast of Sacramento.

Work under the contract includes excavation of 3,600 cubic yards of material and placement of 1,800 cubic yards of reinforced concrete for steel-tower footings, erection of 4,575,000 pounds of structural steel for line towers, and installation of 168 lineal miles of 500,000 circular-mil expanded type copper conductor.

Davey Announces Production Of First 1947 Model

Production of the first model in the 1947 Davey line was announced recently by Paul H. Davey, president, Davey Compressor Company, Kent, Ohio.

Known as the "315-W" (gas) and 315 WD (diesel), the new machine produces 315 cubic ft. of free air per minute at 100 lbs. pressure. It is available in standard skid, steel wheel trailer, and pneumatic-tired trailer mounting styles, and flanged wheel types for railroad work. On trailers, spring-mounting is included without extra cost.

The compressor unit represents a radically new departure in Davey design. It consists of two banks of three cylinders, each bank being arranged in W form. This construction, together with a short 4-inch piston stroke, reduces compressor vibration to an absolute minimum, according to Mr. Davey, and results in a cooler-operating, more efficient machine.

The "W" design also permits of substantial reductions in dimensions and weight. Gasoline-driven units have an over-all length of 140 in., while diesel machines are 12 in. longer. Height is 72 in. and width 65 in. for both gas and diesel machines. Gas units weigh 7,400 lbs. and the diesel weight is 7,800 lbs.

Standard gas units are currently equipped with Hercules RXLD engines, and diesels employ International UD-18 power plants. Other makes of engines will be made optional as the engine production situation improves. Electric starters are standard on diesel machines.

A-C Awarded Contract by Bureau of Reclamation

Additional electrical equipment for the Sterling and Holyoke substations on the Bureau of Reclamation's Colorado-Big Thompson project in Colorado, will be ordered under a $81,409 contract awarded to the Allis-Chalmers Manufacturing Company of Milwaukee, by the Bureau of Reclamation.

The contract calls for furnishing and delivering one 6,000-kva. power transformer, six 833-kva. power transformers, two 10-kva. distribution transformers, three single-pole lightning arrestors, and two 300-kva. automatic step-voltage regulators. All of the equipment is to be of the outdoor type. Spare parts will be supplied for an additional amount of $1,018.

$1,250,000 Expansion Program Proposed

A $1,250,000 expansion program, designed to include transmission and distribution systems into seven northwest Arkansas towns, has been proposed by the Arkansas Western Gas Company, according to an announcement by President L. L. Baxter.

Cities to be served would be: Prairie Grove, Huntsville, Greenland, Berryville, Eureka Springs, Harrison, and Green Forrest.

To Erect $190,000 Building

The Pacific Telephone and Telegraph Company plans to start construction soon of a new building in Centralia, Washington.

The structure will cost $190,000 and will contain all departments, including the business offices.

Main purpose of the new building, D. D. Miller, local manager said, is to permit installation of dial phones in Centralia.

Fullerton Joins A-C

F. A. Fullerton, for 20 years with the Detroit Edison Company, has joined the central station and marine sales and engineering department of the Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, according

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to an announcement by C. C. Jordan, manager of the department.

In his new position, Mr. Fullerton will serve both the Allis-Chalmers product departments and district offices in promoting and coördinating activities on all government power and reclamation projects.

Awarded Westinghouse Order of Merit

THE "Order of Merit," highest award granted to employees of the Westinghouse Electric Corporation for outstanding contributions to the electrical industry, has been conferred upon R. J. Weber, manager of the company's central station and transportation sales divisions, Pittsburgh, Pennslyvania.

Directors of the company voted to present Mr. Weber with a plaque inscribed with a silver "W" and with a scroll stating the award was made in recognition of "his tireless effort in the sale and application of all types of Westinghouse products; for his aptitude in promoting public relations for the company; for the enthusiasm which he imparts effectively to others; and for the inspiring work which he has done for Westinghouse within public utility industry channels."

Lake Superior District Power Plans $226,800 Program

A $226,800 construction expenditure is being planned by Lake Superior District Power Company. Major projects in the program will be the installation of substation and transmission and distribution equipment and rural extensions at Ironwood. Purchase of automotive equipment is also contemplated.

Catalog Available

GENERAL CERAMICS AND STEATITE CORPORATION, Keasbey, New Jersey, announces the publication of catalog 2,000 entitled "Steatite Insulators." Copies may be obtained from the manufacturer.

To Expand Facilities

RANGELY POWER & LIGHT COMPANY has been granted authority to construct transmission facilities in the area surrounding the northwest Colorado oil field.

Opens Philadelphia Office

THE opening of a new Philadelphia office of The General Detroit Corporation and The General Pacific Corporation is announced by E. A. Warren, vice-president in charge of sales.

Elmer A. Marquardt has been appointed zone sales manager in charge of the office which is located at 1427 North Broad street.

The opening of the Philadelphia branch office is in line with a general policy of expansion of the corporation's sales activities on fire extinguishers, motorized fire apparatus, and allied equipment. Other branch offices are maintained in New York, Chicago, Dallas, Boston, Atlanta, Houston, Tulsa, St. Louis, Milwaukee, and Cleveland, as well as the home office in Detroit. The General Pacific Corporation serves the west coast with offices in Los Angeles, San Francisco, and Seattle.

Construction Loans Announced

CONSTRUCTION loans—chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

Central Florida Electric Coöperative, Inc., Chiefland, Fla., $50,000.

Little Ocmulgee Electric Membership Corporation, Alamo, Ga., $50,000.

Jay County Rural Electric Membership Corporation, Portland, Ind., $70,000.

Calhoun County Electric Coöperative Association, Rockwell City, Iowa, $24,000.

Beltrami Electric Coöperative, Inc., Bemidji, Minn., $225,000.

Yazoo Valley Electric Power Association, Yazoo City, Miss., $580,000.

Morrow Rural Electric Coöperative, Inc., Mount Gilead, Ohio, $105,000.

Chickasaw Electric Coöperative, Inc., Somerville, Tenn., $475,000.

O and A Electric Coöperative, Newaygo, Mich., $125,000.

Douglas County Coöperative Light and Power Association, Alexandria, Minn., $575,000.

P. K. M. Electric Coöperative, Inc., Warren, Minn., $400,000.

Missouri Rural Electric Coöperative Association, Palmyra, Mo., $78,000.

Osage Valley Electric Coöperative Association, Butler, Mo., $140,000.

Rosebud Electric Association, Inc., Burke, S. D., a new coöperative, $500,000.

Ozarks Rural Electric Coöperative Corporation, Fayetteville, Ark., $545,000.

Lee County Electric Coöperative, Incorporated, Fort Myers, Fla., $50,000.

Troup County Electric Membership Corporation, La Grange, Ga., $50,000.

Presque Isle Electric Coöperative Association, Onaway, Mich., $12,000.

Northern Electric Coöperative Association, Virginia, Minn., $585,000.

Red Lake Electric Coöperative, Inc., Red Lake Falls, Minn., $415,000.

Wild Rice Electric Coöperative, Inc., Mahnomen, Minn., $480,000.

Scott-New Madri-Mississippi Coöperative Association, Sikeston, Mo., $300,000.

Sun River Electric Coöperative, Inc., Fairfield, Mont., $625,000.

Burt County Rural Public Power District, Tekamah, Neb., $226,000.

Twin Valleys Electric Membership Association, Cambridge, Neb., $438,000.

Cat Rock Electric Coöperative, Inc., Stanton, Tex., $80,000.

Concho Valley Electric Coöperative, Inc., San Angelo, Tex., $260,000.

Kimble Electric Coöperative, Inc., Junction City, Tex., $300,000.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

(*Professional Directory Continued on Next Page*)

PROFESSIONAL DIRECTORY *(continued)*

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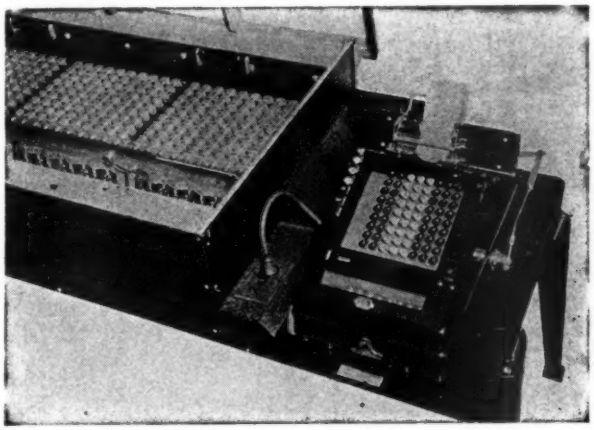

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